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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 784.

OSCAR H. BUTTERFIELD AND ANDREW J. BUTTERFIELD, APPELLANTS,

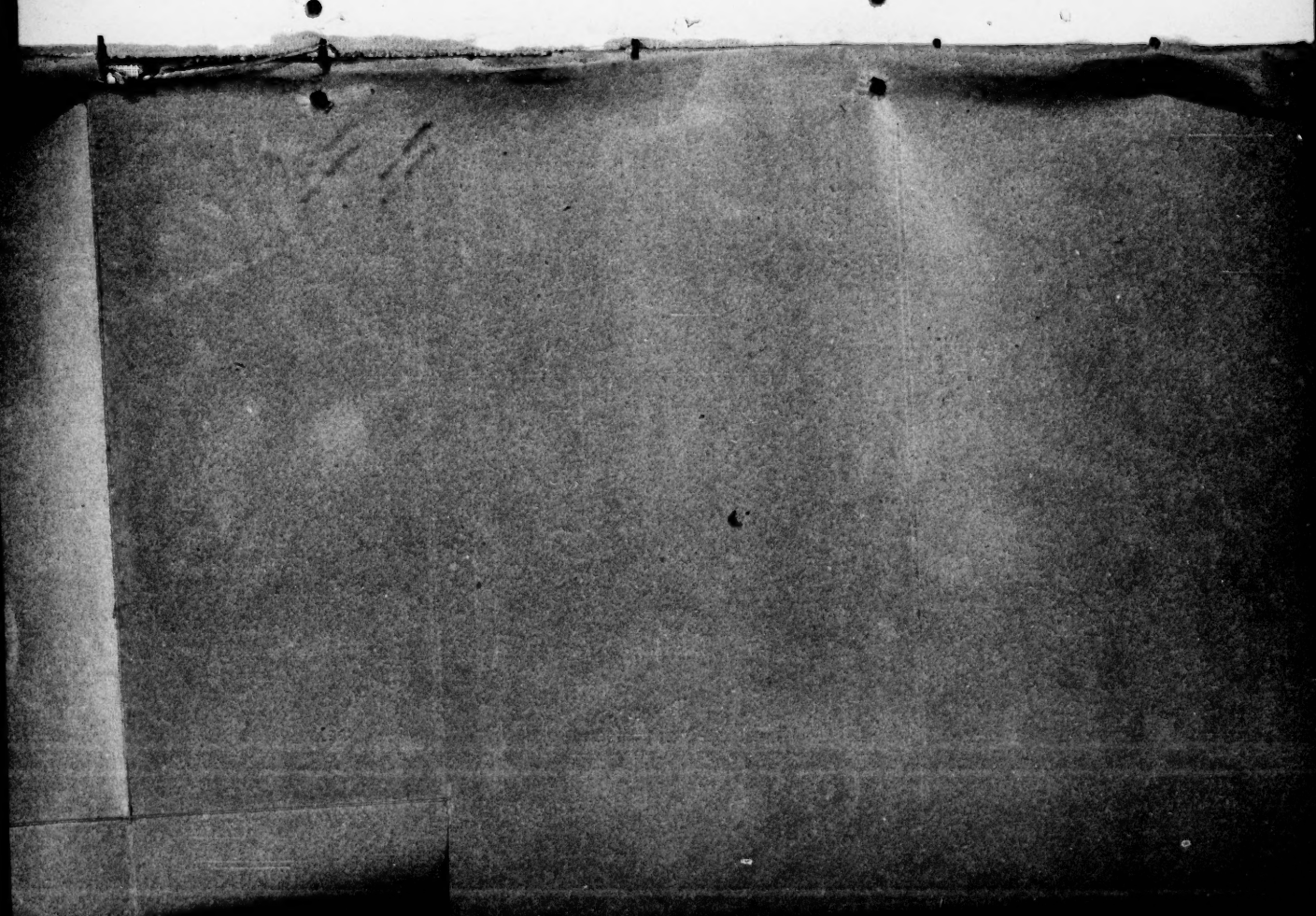
vs.

MARY A. SMITH, ADMINISTRATRIX DE BONIS NON, &C., OF JULIUS C. WRIGHT, DECEASED.

PHILADELPHIA BAR ASSOCIATION

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED JULY 11, 1879.



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1 In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX, &C., COMplainant,
versus
DANIEL M. ADAMS AND OLIVE A. ADAMS, his wife, and others, defendants. } 2055.

Be it remembered that on this day, to wit, October 26, 1877, the complainant, by her solicitors, filed in the clerk's office of said court her bill of complaint and security for costs in said-entitled suit, which said bill of complaint and security for costs are in the words and figures following, to wit:

Bill of complaint.

In the circuit court of the United States, district of Kansas.

To the judges of the circuit court of the United States for the district of Kansas:

Mary A. Smith, administratrix de bonis non with the will annexed, of the estate of Julius C. Wright, deceased, of Newtown, New York, and a citizen of the State of New York, brings this her bill against Daniel M. Adams and Olive A. Adams, his wife, Frederic G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, John Freeman, and the Citizens' Bank of Topeka, all of Shawnee County, Kansas, and citizens of the State of Kansas, Herman Markson, of Leavenworth, Kansas, and Jonathan Myers, of Topeka, Kansas, assignees in bankruptcy of the King Wrought-Iron Bridge Manufactory and Iron-Works of Iola,
2 Kansas, The Second National Bank of Leavenworth, H. B. Cullum, receiver of the First National Bank of Topeka, of Wichita, Kansas, and all citizens of the State of Kansas, Albert G. Edwards, Leonard Matthews and Edward Whittaker, partners under the style of Edwards, Matthews & Co., S. Brunswick and H. Brunswick, partners under the style of S. & H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge and Rolling-Mill, all of St. Louis, Missouri, and citizens of the State of Missouri, The Mastin Bank of Kansas City, Mo., and a citizen of the State of Missouri, Moulton G. Farnham, of , New York, and Mathew K. Smith, of Springfield, Mo., and a citizen of the State of Missouri, partners under the style of Smith & Farnham, J. S. Scott, of Fort Gibson, Indian Territory, and a citizen of the Indian Territory, Zenas King, of Cleveland, Ohio, and a citizen of the State of Ohio, Oscar H. Butterfield and Andrew J. Butterfield, of Windham County, Vermont, and citizen' of the State of Vermont.

And thereupon your orator complains and says:

That the said defendants Daniel M. Adams, at Topeka, Kansas, on the third day of October, A. D. 1872, made his certain promissory note in writing, dated that day, and then and there delivered the same to the said Julius C. Wright, then in his life-time, and thereby promised to pay to the said Julius C. Wright the sum of five thousand dollars seven years after the date thereof, with interest thereon at the rate of ten per cent. per an'm from date until paid, interest payable semi-annually, for value received.

And your orator further avers and shows that to secure the payment of the said sum of money in said note mentioned and the interest thereon at the time and times in said notes specified, the said de-
3 fendant Daniel M. Adams, together with his wife, the said Olive A. Adams, on the said third day of October, A. D. 1872, executed, and for said consideration delivered unto the said Julius C. Wright, grantee therein named, their certain mortgaged deed of that date, and thereby granted and conveyed unto the said Julius C. Wright the following real estate, situate in said county of Shawnee, in the State of Kansas (as described in said mortgage), to wit: Commencing at the northeast corner of section two (2) of the Kansas half-breed lands; thence west twenty-four & ½ chains (24½); thence south to the Kansas River; thence east to the southeast corner of said section; thence north to the place of beginning, except sixty (60) acres deeded to J. Brown in the northeast corner of said section; also twelve acres deeded to Catharine Hindman, on the north end of said section. This description is designed to cover one hundred and twenty-eight acres (128) with the appurtenances.

And your orator further shows that the lands so as aforesaid conveyed and intended to be conveyed in said mortgage by the parties thereto are imperfectly described therein, and that the following is a more exact and definite description thereof, to wit: All that tract or parcel of land situate in the county of Shawnee and State of Kansas, bounded and described as follows: Commencing at the northeast corner of reserve number two (2) of the Kansas half-breed lands; thence running west twenty-four and one-half chains (24½ c.); thence south to the Kansas River; thence east to the southeast corner of said reserve; thence north to the place of beginning, excepting, however, seventy-two (72) acres off the north end thereof, the tract conveyed containing one *one* hundred and twenty-eight (128) acres; which said
4 premises are the lands intended to be conveyed in and by said mortgage by the parties thereto, and that said mortgage ought to be reformed accordingly.

And your orator further shows that after the execution and delivery of said mortgage deed, to wit, on the 19th day of October, A. D. 1872, the said mortgage deed was duly recorded in the office of the register of deeds of said county of Shawnee, Kansas, in book 33 of conveyances, at page 215.

And your orator further shows that under said conveyance and condition was written that, if the said defendant Daniel M. Adams should well and truly pay or cause to be paid the said sum of money in said note mentioned and the interest thereon, as provided according to the tenor and effect of said note, and if the agreements and covenants in said mortgage contained should be faithfully kept and performed on his part, then said conveyance should be null and void; but if the said sum of money in said note mentioned, or any interest thereon, should not be paid when the same became due and payable, or if any taxes or assessments assessed or levied against said property should not be paid when the same became due and payable, then, in either of said cases, the whole of said sum mentioned in said note, with the interest thereon, should immediately become due and payable, and that upon the forfeiture of said mortgage, or upon default in any of the payments as therein provided, the said Julius C. Wright shall be entitled to the possession of said premises. And the said Daniel M. Adams and Olive A. Adams further covenanted and agreed in said mortgage deed, that,

in case of foreclosure of said mortgage, they would pay a reasonable attorney's fee for such foreclosure.

5 And your orator further shows that the said Daniel M. Adams has failed and neglected to pay the said promissory note according to the tenor and effect thereof. That on the third day of October, A. D. 1873, there became due and payable on said note the sum of two hundred and fifty dollars, the semi-annual installment of interest due at that time; that the said defendant did not pay or cause the same to be paid the said sum or any part thereof, and it has not been paid, although duly demanded, and none of the semi-annual installments of interest thereafter falling due on said note have been paid nor any part thereof. And the whole of said sum mentioned in said note with interest as aforesaid since the 3rd day of April, A. D. 1873, remains due and wholly unpaid. And default has likewise been made upon said mortgage by the said grantors therein in the payment of taxes on said land, and the taxes for the year 1872, 1873, 1874, 1875, and 1876, although long since due and payable, have not been paid.

And your orator further shows that the said defendants, Isaac Rosses, Squire Bond, Alfred H. Hentig, Frederic G. Hentig, and George Hentig have been and are committing waste by cutting, felling, and removing, and causing to be cut, felled and removed a large number of timber trees standing and growing on said mortgaged lands; that about thirty (30) acres of said lands are timbered and chiefly valuable on account of said timber, and the cutting thereof will materially lessen the value of said land and greatly impair the value of said security already greatly inadequate; that said Daniel M. Adams is insolvent, and complainant will suffer great and irreparable loss unless said waste is prevented by the injunction of this court.

6 A copy of said mortgage marked B, and a copy of said note marked A are hereto attached & made a part of this bill.

And your orator further shows that the said defendants, Frederic G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, Isaac Rosser, John Freeman, the Citizens Bank of Topeka, Kas., and Herman Markson, and Jonathan Myers, assignee in bankruptcy of the King Wrought-Iron Bridge Manufactory and Iron Works of Iola, Kansas, the Second National Bank of Leavenworth, Kansas, H. B. Cullum, receiver of the First National Bank of Topeka, Kansas, Albert G. Edwards, Leonard Matthews, and Edward Whittaker, partners, under the name of Edward, Matthews & Co., S. Brunswick and H. Brunswick, partners under the style of S. & H. Brunswick, the Valley National Bank of St. Louis, Mo., the Clerks' Saving Bank of St. Louis, Mo., the Life Association of America, the Henbacker Forge & Rolling Mills of St. Louis, Mo., the Mastin Bank of Kansas City, Mo., Mathew K. Smith and Moulton G. Farnham, partners under the style of Smith & Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield have or claim to have an interest in or lien upon the said mortgaged premises, which interest or lien, if any, is subject to and subsequent to the lien of said mortgaged deed thereon.

And your orator further shows that at the date of the execution and delivery of said note and mortgage, the said Julius C. Wright was a citizen of the State of New York, residing in the county of Queens in that State, and so continued to be such citizen and resident until the day of , A. D. 1874, when he departed this life, leaving a will by which he duly appointed George P. Wright the executor thereof.

That on the fourth day of March, A. D. 1874, the said will was

7 duly admitted to probate in the surrogate's court in and for the

said county of Queens, and letters testamentary were thereupon duly issued to said George P. Wright thereon out of said court, who thereupon proceeded in the execution of said trust until on or about the day of , A. D. 1877, when he, the said George P. Wright, departed this life without having fully executed said will, and thereupon on, to wit, the 28th day of February, A. D. 1877, such proceedings were had in and by the surrogate's court of the county Queens aforesaid that your orator was duly appointed administratrix with the will annexed of the estate of said Julius C. Wright, deceased, and letters of administration were accordingly issued to her out of said court with the will annexed to administer upon the good' and estate of said Julius C. Wright, deceased, not already administered, and thereupon your orator duly qualified as such administratrix and ever since has acted as such administratrix, the said surrogate's court then and there having jurisdiction and authority in that behalf to admit said will to probate, and to issue letters testamentary and letters of administration thereon.

And your orator further shows and avers that there is now justly due from the said Daniel M. Adams to your orator the said sum of five thousand dollars with interest thereon since the third day of April, A. D. 1873, at the rate of ten per cent. per annum, payable semi-annually, together with interest at the rate of seven per cent. per annum on each of said semi-annual installments of interest from the time they respectively fell due. and the further sum of five hundred dollars, solicitor's fee, for the foreclosure of said mortgage, which is a reasonable sum therefor.

8 Wherefore your orator prays the aid of this court in the premises, that the above-named defendants and each of them may appear in this suit before your honors and answer this your orator's bill according to the rules and practice of this court; that your orator may have the decree of this court, reforming the said mortgage, so that the premises therein conveyed shall be held and taken to be the said premises as hereinbefore described, and for the sale of said premises, according to the rules and practice of this court; that an account may be taken of the amount due your orator from the said Daniel M. Adams, and that the same may be paid to your orator out of the proceeds of such sale, if sufficient after first paying therefrom the taxes, penalties, interest, and charges as provided by law, and the costs of this suit; that the said defendant' and each of them, and all persons claiming by, through or under them, or any of them, subsequent to the commencement of this action, either as purchasers, incumbrancers or otherwise, be forever barred and foreclosed of all right, claim, lien, interest, and equity of redemption in the said premises, and every part thereof; that the said Daniel M. Adams may be adjudged to pay any deficiency which may remain after applying all of said moneys applicable thereto; that the purchaser or purchasers be let into possession on such sale; that a temporary injunction restraining the said defendants so as aforesaid averred to be committing waste, their agents, tenants, and servants, and every of them, from cutting, felling, and injuring any of the timber or trees on said premises, or removing any timber therefrom during the pendency of this suit, and that on the final hearing hereof, said injunction be made perpetual; that a receiver be appointed

9 to take charge and possession of said premises and collect and receive the rents and profits thereof, and perform the usual duties of a receiver in like cases, and that your orator have all such further orders, judgment and relief as in equity she may be entitled to and as to the court shall seem proper.

That it may please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendants Daniel M. Adams and Olive A. Adams, his wife; Frederic G. Hentig, Alfred H. Hentig, Squire Bond, Isaac Rosser, John Freeman, The Citizens' Bank of Topeka, Herman Markson, and Jonathan Myers, assignees in bankruptcy of the King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas; The Second National Bank of Leavenworth, Kansas; H. B. Cullum, receiver of the First National Bank of Topeka, Kas.; Albert G. Edwards, Leonard Matthews and Edward Whittaker, partners under the style of Edwards, Mathews & Co., S. Brunswick and H. Brunswick, partners under the style of S. & H. Brunswick: The Valley National Bank of St. Louis, Mo.; The Clerks' Savings Bank of St. Louis, Mo.; The Life Association of America, The Henbacker Forge & Rolling Mills of St. Louis, Mo.; The Mastin Bank of Kansas City, Mo.; Mathew K. Smith and Moulton G. Farnham, partners under the style of Smith & Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield, commanding them and each of them by a certain day and under a certain penalty to be and appear in the circuit court of the United States for the district of Kansas, then and there to answer the premises, and further to stand to and abide by such order, judgment, or decree as shall be made in the premises and shall be agreeable to equity and good conscience.

BENSON & PARKINSON,
10 *Solicitors for Complainant.*

T. C. SEARS,
Of Counsel.

EXHIBIT A.

5,000.00.] TOPEKA, KANSAS, *Oct.* 3, 1872.

Seven years after date I promise to pay to the order of Julius C. Wright five thousand dollars, at , value received, with interest at ten per cent. per annum, payable semi-annually, in New York exchange.

Due .

[STAMP.] DANIEL M. ADAMS.

(Note endorsed:)

Interest rec'd to Oct. 3, 1872.

J. C. WRIGHT,
Per A. W.

Interest rec'd to April 1, '73.

J. C. WRIGHT,
Per A. W.

EXHIBIT B.

This indenture, made this third day of October, in the year of our Lord one thousand eight hundred and seventy-two, between Daniel M. Adams and Olive A. Adams, his wife, parties of the first part, and Julius C. Wright, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of five thousand dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey, unto the said party of the second part, and to his heirs and assigns, forever, all the following de-

scribed lot, piece or parcel of land, lying and situate in the county of Shawnee and State of Kansas, to wit, commencing at the northeast corner of section two (2) of the Kansas half breed lands; thence west twenty-four ½ (24½) chains; thence south to the Kansas River; thence east to the southeast corner of said section; thence north to the place of beginning, except sixty acres deeded to J. Brown, being in the northeast corner of said section; also twelve acres (12) deeded to Catharine Hindman, on the north end of said section. This description is
11 designed to cover one hundred and twenty-eight acres (128).

To have and to hold the same with all and singular the hereditaments and appurtenances thereunto belonging unto the party of the second part, and to his heirs and assigns, forever.

Provided always, and these presents are upon this express condition, that whereas the said Daniel M. Adams has this day executed and delivered his certain promissory note in writing to the party of the second part, of which the following is the substance:

$5,000.] TOPEKA, KANSAS, *Oct. 3rd*, 1872.

Seven years after date promise to pay to the order of Julius C. Wright five thousand dollars, at , value received, with interest at ten per cent. per am'n, payable semi-annually, in New York exchange.

DANIEL M. ADAMS.

Now if the said party of the first part shall well and truly pay or cause to be paid the said sum of money in said note mentioned with the interest thereon, according to the tenor and effect of said note, then these presents shall be null and void. But if said sum of money or any part thereof, or any interest thereon, is not paid when the *the* same is due, then in that case the whole of said sum and interest shall and by this indenture does immediately become due and payable, or if the taxes and assessments of every nature, which are assessed or levied against said premises, are not paid at the time when the same are by law made due and payable, then in like manner the whole of said sum shall immediately become due and payable, and upon forfeiture of this mortgage, or in case of default in any of the payments herein provided for, the party of the second part shall be entitled to the possession of the premises.

It is further understood between the parties hereto, that in case
12 of the foreclosure of this mortgage the said party of the second part hereto shall be entitled to his reasonable attorney's fee for such foreclosure, and the same shall be a lien upon the said premises, and collected as the said principal sum, and this mortgage shall in no wise be satisfied or cancelled until such sum is fully paid.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

DANIEL M. ADAMS. [SEAL.]
OLIVE A. ADAMS. [SEAL.]

THE STATE OF KANSAS,
County of Shawnee, ss:

Be it remembered, that on this third day of October, A. D. eighteen hundred and seventy-two, before me, the undersigned, a notary public in and for the county and State aforesaid, came Daniel M. Adams and Olive A. Adams, his wife, who are personally known to me to be the identical persons whose names are affixed to the foregoing instrument of writing as grantors, and they duly acknowledged the execution of

the same to be their free and voluntary act and deed for the purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[NOTARIAL SEAL.] G. C. CLEMENS,
Notary Public.

(Indorsed:)
STATE OF KANSAS,
Shawnee County, ss:

This instrument was filed for record on the 19th day of October, A. D. 1872, at 10.20 o'clock a. m., and duly recorded in book 33 of conveyances at page 215.

WM. P. THOMPSON,
Register.

13 (Bill endorsed:) No. 2055. Mary A. Smith, adm'x, &c., vs. Daniel M. Adams et al. Bill of complaint. Filed Oct. 26, 1877. A. S. Thomas, clerk. Benson & Parkinson, sol. for compl't, Ottawa, Ks.

Security for costs.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX, &C., OF the estate of Julius C. Wright, dec'd,
vs.
DANIEL M. ADAMS ET AL.

I enter myself security for costs in said case, and promise to pay all costs which may accrue to the opposite parties in this action or to any of the officers of this court. And in default of payment by the plaintiff of any costs ordered or adjudged to be paid by her, I hereby agree and stipulate that execution may issue against my property for any costs taxed against her.

Dated this 24th day of October, 1877.

JOHN P. HARRIS.

(Endorsed:) No. 2055. Mary A. Smith, adm'x, &c., vs. Daniel M. Adams et al. Security for costs. Filed Oct. 26, 1877. A. S. Thomas, clerk. Approved, A. S. Thomas, clerk, Oct. 26,'77.

And on this day, to wit, Oct. 26, 1877, the clerk of said court issued a writ of chancery subpœna in said entitled suit, which said writ of chancery subpœna, with the endorsement and marshal's return thereon, is in the words and figures following, to wit:

Chancery subpœna.

UNITED STATES OF AMERICA,
District of Kansas, ss:

The United States of America to Daniel M. Adams and Olive A.
14 Adams, his wife, Frederick G. Hentig, Alfred H. Hentig, Squire Bond, John Freeman, The Citizens' bank of Topeka, Kansas, Herman Markson and Jonathan Myers, assignees in bankruptcy of the King Wrought-Iron Bridge Manufactory and Iron Works of Iola, Kansas, The Second National Bank of Leavenworth, Kansas, H. B.

Cullum, receiver of the First National Bank of Topeka, Kan's, Albert G. Edwards, Leonard Matthews and Edward Whittaker, partners under the style of Edward, Mathews & Co., S. Brunswick and H. Brunswick, partners under the style of S. & H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank of St. Louis, Mo., The Life Association of America, The Henbacker Forge & Rolling Mills of St. Louis, Mo., The Mastin Bank of Kansas City, Mo., Mathew K. Smith and Moulton G. Farnham, partners under the style of Smith & Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield, greeting:

We command you and every of you that you appear before our judge of our circuit court of the United States of America for the district of Kansas, at the city of Topeka in said district, on the first Monday in the month of December next, to answer the bill of complaint of Mary A. Smith, administratrix de bonis non, with the will annexed, of the estate of Julius C. Wright, deceased, this day filed in the clerk's office of said court in said city of Topeka, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Kansas to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Topeka in said district, this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] A. S. THOMAS,
Clerk.

MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at the city of Topeka aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

A. S. THOMAS,
Clerk.

(Endorsed:) No. 2055. Circuit court United States, district of Kansas. Mary A. Smith, adm'r, &c., Daniel M. Adams et al. Chancery subpœna. Returnable to rule day, first Monday in December, A. D. 1877. A. S. Thomas, clerk. Benson & Parkinson & T. C. Sears, compl't's sol'rs.

U. marshal's return.

DISTRICT OF KANSAS, *ss:*

Rec'd this writ Oct. 27, 1877, and served same on the within-named defendant, Herman Markson, assignee, &c., at Leavenworth, State and district of Kansas, on the 1st day of November, 1877, by delivering to him personally a true and certified copy of this writ, with all the endorsements thereon, and served said writ on the within-named defendants, The Second National Bank of Leavensworth, Kansas, at the time and place above mentioned, by delivering to W. P. Borland, its last cashier, personally, like copy of the writ.

CHAS. H. MILLER,
U. S. Marshal, Dist. of Kans.

I certify that I served this writ on the within-named defendants, H.

B. Cullum, receiver, &c., at Sedgwick County, State and district of Kansas, on the 3rd day of November, 1877, by delivering to him personally a true & certified copy of this writ with all the endorsements thereon.

CHAS. H. MILLER,
U. S. Marshal,
By CHAS. B. JONES,
Deputy.

16 I certify that I served this writ on the within-named Daniel M. Adams, Olive M. Adams, his wife, Frederick G. Hentig, Squire Bond, John Freeman, & Jonathan Myers, assignee, &c., on the 20th day of November, 1877, at Shawnee Co., State & district of Kansas, by delivering to each of them personally a true and certified copy of this writ with all the endorsements thereon.

I further return that I served this writ on the within named defendant, The Citizens' Bank of Topeka, at the time and place above mentioned, by delivering to Peter Smith personally a like copy of this writ. He, said Peter Smith, being then and there the assistant cashier of said defendant, The Citizens' Bank of Topeka, and ther office in charge thereof.

After diligent search and inquiry, I have been unable to find any of the other within-named defendants in my district.

CHAS. H. MARSHAL,
By C. L. VANDERPOOL,
Deputy.

Marshal's fees, $45.50.
Filed Nov. 26, 1877.

A. S. THOMAS,
Clerk.

And on this day, to wit, Saturday, December 1st, 1877, the clerk of said court made an entry on the order book in said entitled suit, which said entry is in the words and figures following, to wit:

Order book entry.

MARY A. SMITH, ADM'R'T'X, &C., *vs.* DANIEL M. ADAMS ET AL. } 2055. In equity.

And now come Squire Bond and F. G. Hentig, two of the defendants in the above-entitled suit, by F. G. Hentig, their solicitors, and enter their appearance in said suit and to the complainant's bill of complaint filed therein.

17 And on this day, to wit, Saturday, Dec. 1, 1877, at November term of said court, in the record of the proceedings thereof in said entitled suit, are the following entries, to wit:

Journal entry.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed of the estate of Julius C. Wright, deceased, *vs.* DANIEL M. ADAMS AND OTHERS. } 2055. In equity.

Comes now said complainant by Benson & Parkinson, her solicitors,

and it being made to appear to the satisfaction of the court that Alfred H. Hentig, one of the defendants in the above entitle' cause, is a non-resident of the State of Kansas, and that he cannot be served with the writ of subpœna within the State and district of Kansas, it is therefore hereby ordered that the said Alfred H. Hentig appear, plead, answer or demur to the bill of complaint in this suit on the first Monday in the month of March, 1878, and that the said Alfred H. Hentig be served with this order by a publication hereof in the Commonwealth for four consecutive weeks, commencing on the 6th day of December, A. D. 1877.

C. G. FOSTER,
Judge.

Journal entry.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, d'c'd,
vs.
DANIEL M. ADAMS & OLIVE A. ADAMS, HIS wife, Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, John Freeman, The Citizens' Bank of Topeka, Herman Markson and Jonathan Myers, assignees of the King Wrought Iron Bridge Manufac-
18 tory & Iron Works, of Iola, Kansas, The Second National Bank of Leavenworth, H. B. Cullum, receiver of the First } 2055.
National Bank of Topeka, Albert G. Edwards, Leonard Matthews & Edward Whittaker, partners under the style of Edwards, Mathews & Co., S. and H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge & Rolling Mills, The Mastin Bank, Moulton G. Farnham & Mathew K. Smith, partners under the style of Smith & Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield.

Comes now said complainant by Benson & Parkinson, her solicitors, and it being made to appear to the satisfaction of the court that said defendants, Oscar H. Butterfield and Andrew J. Butterfield are residents of the State and district of Vermont, and that they cannot be served with a writ of subpœna within the State and district of Kansas, it is therefore hereby ordered that said Oscar H. Butterfield and Andrew J. Butterfield appear, plead, answer, or demur to the bill of complaint in this suit on the first Monday in the month of March next, and that said Oscar H. Butterfield and Andrew J. Butterfield each be served with this order by delivering to each of them personally a true copy hereof, or by leaving a copy hereof at the usual place of abode of each of them with some free white person who is a member of or resides in the family. And it is further ordered that the clerks of this court issue to the marshal for said district of Vermont a duly certified copy of this order, and said marshal is hereby directed to make service hereof as aforesaid, service to be made at least 30 days before answer day.

C. G. FOSTER,
Judge.

19 And on this day, to wit, December 1, 1877, there was filed in the clerk's office of said court an affidavit of non-residence of certain defendants in said entitled suit, which said affidavit is in the words and figures following, to wit:

Affidavit of non-residence.

In the circuit court of the United States for the district of Kansas. In equity.

MARY A. SMITH, ADMINISTRATRIX, &C., *vs.* DAN'L M. ADAMS ET AL. } No. 2055.

W. L. Parkinson, of lawful age, being duly sworn, deposes & says that Alfred H. Hentig, Oscar H. Butterfield and Andrew J. Butterfield, three of the defendants in the above entitled cause, are non-residents of the State of Kansas, & are not inhabitants of, nor can they be found in the district of Kansas. That, as affiant is informed & believes, the said defendants, Oscar H. Butterfield and Andrew J. Butterfield, are inhabitants of the State of Vermont, and residents of Windham County, in said State, but that the residence of said Alfred H. Hentig is to affiant unknown.

And affiant says that he has lately made inquiries of the friends and acquaintenances of the said Alfred H. Hentig and of his present place of residence and abode; that he has been informed by a brother of the said defendant, who resides in the city of Topeka, in said district of Kansas, that the said Alfred H. Hentig is connected with the United States Army, and that he has no permanent residence or place of abode, and that the last heard from the said Alfred H. Hentig by his said brother and relation was that he was stationed some place in the Territory of Arizona, but that his present whereabouts and location is
20 to his said brother and relation unknown, and that this affidavit is made for the purpose of procuring an order requiring said above named defendants to plead, answer, or demur to complainant's bill at a time to be fixed by the court.

W. L. PARKINSON.

STATE OF KANSAS,
Shawnee County, ss:

Sworn to and subscribed in my presence this 1st day of December, 1877.

A. S. THOMAS,
Clerk.

(Endorsed:) No. 2055. U. S. circuit court. Mary A. Smith, administratrix, &c., vs. Dan'l M. Adams et als. Affidavit of non-residence. Filed Dec. 1, 1877. A. S. Thomas, clerk.

And on this day, to wit, January 7, 1878, there was filed in the clerk's office of said court a plea in abatement of F. G. Hentig in said entitled suit, which said plea is in the words and figures following, to wit:

Plea in abatement of F. G. Hentig.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, compl't,
vs.
DANIEL M. ADAMS ET AL., DEF'TS. } 2055.

Plea in abatement.

The plea of F. G. Hentig, one of the defendants to the bill of complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters & things in the said complainant's bill of complaint mentioned & contained to be true in such sort, manner, and form as the same are therein set forth & alleged, for plea to the whole of said bill, or so much and such part of said bill as prays for an
21 injunction or the appointment of a receiver, or that an account may be taken, or for any relief whatever, this defendant says that said complainant, Mary A. Smith, is not the duly qualified administratrix, with the will annexed, of the estate of said Julius C. Whight, deceased; therefore this defendant doth plead the same in bar to the said complainant's bill & prays the judgment of this honorable court whether he should be compelled to make any further answer to the said bill, and prays to be hence dismissed with his reasonable costs & charges in this behalf most wrongfully sustained.

F. G. HENTIG,
Defendant.

F. G. Hentig, being duly cautioned & sworn, according to law, deposes & says that he has read the foregoing plea, and knows the contents thereof; that the statements therein contained are true, as he verily believes; that the same is not interposed for delay.

F. G. HENTIG.

Subscribed and sworn to before me this 7th day of January, 1878.
[SEAL.] SAM'L K. LAKIN,
Notary Public.

I certify that, in my opinion, the foregoing plea of F. G. Hentig, defendant, to the bill of complainant, Mary A. Smith, administratrix de bonis non, is well founded in point of law, & proper to be filed in the above cause.

L. H. WHITNEY,
Of Counsel.

(Endorsed:) 2055. Mary A. Smith, adm't'rix, vs. Daniel M. Adams et al. Plea in abatement of def't F. G. Hentig. Filed January 7, 1878. A. S. Thomas, clerk.

And on this day, to wit, January 7, 1878, there was filed in the clerk's office of said court a plea in abatement of defendant Squire Bond
22 in said entitled suit, which said plea is in the words and figures following, to wit:

Plea in abatement of defendant Squire Bond.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX, &C., COMplainant,
vs.
DANIEL M. ADAMS ET AL., DEFENDANTS.

Plea in abatement.

The plea of Squire Bond, one of the defendants to the bill of complaint of Mary A. Smith, administratrix, &c., complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters & things in the said bill of complaint to be true in such manner & form as the same are therein & thereby set forth & alleged, for plea thereunto saith that the note and mortgage sued upon in this action was not at the time of the commencement of this suit, is not now, and never has been, the property of the estate of the said Julius C. Wright, and that the said complainant, Mary A. Smith, administratrix, &c., never had possession of & has no knowledge whatever of the existence of said note and mortgage, & that this suit was brought without her knowledge & consent; therefore, this defendant doth plead the said matters and things aforesaid in bar to the said bill of said complainant, & in bar to such discoveries as is sought by said bill, & humbly prays the judgment of this honorable court whether he shall be compelled to make any further answer to said bill; & he prays to be here dismissed with his reasonable costs in this behalf sustained.

23 I certify that, in my opinion, the foregoing plea of Squire Bond, defendant, to the bill of complainant, Mary A. Smith, administratrix, &c., is well founded in point of law, & proper to be filed in the above-entitled cause.

F. G. HENTIG,
Sol'r for Def't Bond.

STATE OF KANSAS,
County of Shawnee, ss:

Squire Bond, being duly sworn, does depose & say that he has read the foregoing plea to the bill of the complainant in this suit; that the same is not interposed for delay, & that it is true in point of fact, as he verily believes.

SQUIRE BOND.

Subscribed and sworn to before me this 9th day of January, A. D.

[SEAL.] W. H. JENKINS,
Notary Public.

(Endorsed:) 2055. Mary A. Smith, adm'trix, &c., vs. Daniel M. Adams et al. Plea in abatement of defendant Squire Bond. Filed January 7, 1878. A. S. Thomas, clerk.

And on this day, to wit, January 22, 1878, there was filed in the clerk's

office of said court the separate plea of John Freeman in said entitled suit, which said plea is in the words and figures following, to wit:

Separate plea of John Freeman.

UNITED STATES OF AMERICA:

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADM'X, ETC., OF THE ESTATE of John C. Wright, pl'ff,
against
DANIEL M. ADAMS, OLIVE A. ADAMS, JOHN Freeman, et al., defendants.

Plea of John Freeman, one of the defendants in the above-entitled cause.

24 John Freeman, one of the defendants to the bill of complaint filed against this defendant & others, comes in his own proper person, & also by his counsel, L. H. Whitney, and for plea and answer to said plaintiff's bill of complaint this defendant explicitly disclaims & denies having any interest, right, or title in and to the premises mentioned & described in said plaintiff's bill of complaint. He therefore prays judgment against said plaintiff for his costs in this behalf expended, and that he may go hence without day, and as defendant will always pray, etc.

JOHN FREEMAN.

L. H. WHITNEY,
Of Counsel.

(Endorsed:) No. 2055. Mary A. Smith, adm'x, etc., vs. Dan. Adams, John Freeman, et al. Separate plea of John Freeman. Filed Jan'y 22, 1878. A. S. Thomas, clerk.

And on this day, to wit, March 4, 1878, there was filed in the clerk's office of said court a proof of publication in said entitled suit, which said proof of publication is in the words and figures following, to wit:

Proof of publication.

STATE OF KANSAS,
County of Shawnee, ss:

N. R. Baker, being duly sworn, says that he is one of the publishers of the Commonwealth, a weekly newspaper printed and published at the city of Topeka, county of Shawnee and State of Kansas, and that the printed notice hereto annexed was published in said Commonwealth four consecutive weeks, the first publication of said notice being made on the 6th day of December, A. D. 1877; the second on the 13th day of December, A. D. 1877; the third on the 20th day of December, A. D. 1877; the fourth on the 27th day of December, A. D. 1877; the
25 fifth on the day of , A. D. 187 ; the sixth on the day of , 187 ; and further he saith not.

N. R. BAKER.

Printer's fees, $10.00, paid by complainant.

Subscribed and sworn to before me this 4th day of March, A. D. 1878.

[SEAL.] A. S. THOMAS,
Clerk Clerk *of the Circuit Court of the United States, Dist. of Kansas.*

Notice.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased,
vs.
DANIEL M. ADAMS & OTHERS. } No. 2055. In equity.

Comes now said complainant, by Benson & Parkinson, her solicitors, and it being made to appear to the satisfaction of the court that Alfred H. Hentig, one of the defendants in the above entitled cause, is a non-resident of the State of Kanas, and that he cannot be served with the writ of subpœna within the State and district of Kansas—

It is, therefore, hereby ordered that the said Alfred A. H. Hentig appear, plead, answer, or demur to the bill of complaint in this suit, on the first Monday in the month of March, 1878, and that the said Alfred H. Hentig be served with this order by a publication hereof in the Commonwealth fo'r consecutive weeks, commencing the sixth day of December, A. D. 1877.

C. G. FOSTER,
Judge.

(Endorsed:) No. 2055. Mary A. Smith et al. vs. D. M. Adams et al. Proof of publication. Filed M'ch 4, 1878. A. S. Thomas, clerk.

And on this day, to wit, March 4th, 1878, the complainant, by
26 her solicitors, filed in the clerk's office of said court her motion to strike plea of Squire Bond from the files in said entitled suit, which said motion is in the words and figures following, to wit:

Motion to strike plea of Squire Bond from files.

In the circuit court of the United States for the district of Kansas. In equity.

MARY A. SMITH, ADM'R, &C.,
vs.
DANIEL M. ADAMS ET AL. } No. 2055.

And now comes said complainant, by G. C. Clemens, of her counsel, and moves to take from the files the plea filed herein by Squire Bond, because the same is not *is not* verified as required by the 31st chancery rule. This motion will be heard before the Hon. Cassius G. Foster on' the judges of this court, on April rule-day, 1878, at his chambers, in the city of Atchison, at 4 o'clock p. m.

G. C. CLEMENS,
Of Counsel for said Complainant.

To clerk:

Enter the above motion and notice on the order book.

G. C. CLEMENS,
Of Counsel aforesaid.

(Endorsed:) No. 2055. Mary A. Smith, adm'r, vs. D. M. Adams et al. Motion to strike plea of Squire Bond from the files. Filed March 4, 1878. A. S. Thomas, clerk.

And on this day, to wit, March 4, 1878, the complainant, by her solicitor, filed in the clerk's office of said court her motion to strike plea of F. G. Hentig from the files in said entitled suit, which said motion is in the words and figures following, to wit:

Motion to strike plea of F. G. Hentig from files.

In the circuit court of the United States for the district of Kansas. In equity.

MARY A. SMITH, ADMI'X, &C., *vs.* DANIEL M. ADAMS ET AL. } No. 2055.

27

And now comes said complainant, by G. C. Clemens, of her counsel, and moves to take from the files the plea filed herein by F. G. Hentig, because the same is not verified as required by the 31st chancery rule.

This motion will be heard before the Hon. Cassius G. Foster, one of the judges of this court, on April rule-day, at his chambers in the city of Atchison, at 4 o'clock p. m.

G. C. CLEMENS,
Of Counsel for said Complainant.

To clerk:

Enter the above motion and notice on the order book.

G. C. CLEMENS,
Solicitor as above.

No. 2055. Mary A. Smith, adm'r, &c., vs. Daniel M. Adams et al. Motion to strike plea of F. G. Hentig from the files. Filed March 4, 1878. A. S. Thomas, clerk.

And on this day, to wit, rule-day March 4, 1878, the clerk of said court made three entries on the order-book in said-entitled suit, which said entries are in the words and figures following, to wit:

Order-book entry.

MARY A. SMITH, ADM'r, &C., *vs.* DANIEL M. ADAMS ET AL. } 2055.

The subpœna in the above-entitled suit having been returned, which return has been filed, and it appearing therefrom that said subpœna was duly served on the Citizens' Bank of Topeka, Herman Markson and Jonathan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas, The Second National Bank of

Leavenworth, H. B. Cullum, receiver of the First National Bank
28 of Topeka, five of the defendants in said entitled suit, and no appearance having been entered on the part of said defendants, and they having failed to plead, answer, or demur to the complainants' bill of complaint filed herein: Therefore, on motion of G. C. Clemens, of counsel for complainant, it is ordered and decreed that the bill herein be taken pro confesso as to said defendants The Citizens' Bank of Topeka, Herman Markson and Jonathan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Work' of Iola, Kansas. The Second National Bank of Leavenworth, and H. B. Cullum, receiver of the First National Bank of Topeka.

Order-book entry.

MARY A. SMITH, ADM'r, &C., } 2055.
vs.
DANIEL M. ADAMS ET AL. }

The defendants Albert G. Edwards, Leonard Mathews, and Edward Whittaker, partners as Edwards, Mathews & Co., S. Brunswick and H. Brunswick, partners as S. & H. Brunswick, The Clerks' Savings Bank, The Henbecker Forge and Rolling Mill, and The Mastin Bank, having entered their appearance in said suit, and having failed to plead, answer, or demur to the complainant's bill filed herein: Therefore, on motion of G. C. Clemens, of counsel for complainant, it is ordered and decreed that the bill herein be taken pro confesso as to said defendants Albert G. Edwards, Leonard Mathews, and Edward Whittaker, partners a' Edward Mathews & Co., S. Brunswick and H. Brunswick, partners as S. & H. Brunswick, The Clerks' Savings Bank, The Henbacker, Forge and Rolling Mills, and The Mastin Bank.

29 *Order-book entry.*

MARY A. SMITH, ADM'r, &C., } 2055.
vs.
DANIEL M. ADAMS ET AL. }

Alfred H. Hentig, one of the defendants in the above-entitled suit, having be*ing* duly served with an order of said court by publication in the Commonwealth, and having failed to appear, plead, answer, or demur to the bill of complaint in said suit as commanded by said court: Therefore, on motion of G. C. Clemens, of counsel for complainant, it is ordered and decreed that the bill herein be taken pro confesso as to said defendant.

ALFRED H. HENTIG.

And on this day, to wit, March 23, 1878, the parties, by their solicitors, filed in the clerk's office of said court their stipulation as to hearing of motion, which said stipulation is in the words and figures following, to wit:

Stipulation as to hearing of motion.

In the circuit court of the United States for the dist. of Kansas.

MARY A. SMITH, ADMIX'r, &C., vs. DANIEL M. ADAMS ET AL. } No. 2055.

It is hereby stipulated & agreed by and between the att'ys herein that the motion to strike from the files the pleas fixed by def'ts Bond & Hentig shall be taken up at the adjourned term of said court to be held in Topeka, April 9th, 1878.

F. G. HENTIG,
Att'y for Bond & Hentig.
G. C. CLEMENS,
Of Counsel for Complainant.

(Endorsed:) No. 2055. Mary A. Smith, adm'x, vs. Daniel M. Adams et al. Stipulation as to hearing of motion. Filed March 23, 1878. A. S. Thomas, clerk.

30 And on this day, to wit, April 9th, 1878, at November term, 1878, of said court, in the record of the proceedings thereof in said entitled suit are the following entries, to wit:

Journal entry.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant,
vs.
DANIEL M. ADAMS, OLIVE A. ADAMS, HIS WIFE, Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, John Freeman, The Citizens' Bank of Topeka, Herman Markson and Jonothan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas, The Second National Bank of Leavenworth, H. B. Cullum, receiver of the First National Bank of Topeka, Albert G. Edwards, Leonard Matthews, and Edward Whitaker, partners under the style of Edward Matthews & Co., S. & H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacer Forge & Rolling Mills, The Masten Bank, Moulton G. Farnham and Mathew K. Smith, partners under the style of Smith & Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield, defendants. } No. 2055.

TUESDAY, *April 9th*, 1878.

31 And now upon the application of said complainant in open court made, it being made to appear to the satisfaction of the court that this is a suit brought to enforce a lien on real estate

lying wholly within the district of Kansas, and that the said defendants Oscar H. Butterfield and Andrew J. Butterfield are residents of the district of Vermont, and that they have not been and cannot be found within the district of Kansas, and that neither of them has voluntarily appeared to this suit, it is now here by the court ordered that the said Oscar H. Butterfield and Andrew J. Butterfield do appear and plead, answer or demur, to the complainant's bill herein on or before the last Monday in May, A. D. 1878, and that a copy of this order be served upon them in the district of Vermont on or before the first Monday in May, A. D. 1878, and that a copy of this order be also served on the person or persons, whomsoever they may be, in possession and occupancy of the premises in controversy on or before the first day of May, A. D. 1878.

C. G. FOSTER, *Judge*.

Journal entry.

MARY A. SMITH, ADMINISTRATRIX, } 2055.
vs.
DANIEL M. ADAMS ET AL. }

TUESDAY, *April 9th*, 1878.

The complainant's motion filed herein to take from the files the plea filed herein by F. G. Hentig came on to be heard and was argued by counsel, on consideration whereof it is ordered by the court that said motion be and the same is hereby overruled, and that said complainant have leave to file reply by April 10, 1878.

32 And on this day, to wit, June 2, 1878, there was filed in the clerk's office of said court a motion to set aside service on def't A. H. Hentig in said entitled suit, which said motion is in the words and figures following, to wit:

Motion to set aside service on def't A. H. Hentig.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX, &C., } 2055.
vs.
DANIEL M. ADAMS ET AL. }

Motion to set aside publication service upon def't A. H. Hentig.

And now comes F. G. Hentig, who appear' specially and for the purpose of this motion only, & for no other purpose, and moves the court to set aside the service heretofore made by publication in this cause upon the defendant Alfred H. Hentig, for the reasons that the affidavit upon which said order for service was made is insufficient in law to sustain said order, & that said notice is not sufficient to preclude said defendant from his rights and interests in said lands described in complainant's bill of complaint.

F. G. HENTIG.

(Endorsed:) 2055. Mary A. Smith, adm'x, vs. Daniel M. Adams et al. Motion to set aside service on def't A. H. Hentig. Filed June 12, 1878. A. S. Thomas, clerk.

And on this day, to wit, Thursday, June 13th, 1878, at June term, 1878, of said court, in the record of the proceedings thereof in said entitled suit is the following entry, to wit:

Journal entry.

MARY A. SMITH, ADM'X, &C., } 2055.
vs.
33, 34 DANIEL M. ADAMS ET AL. }

THURSDAY, *June* 13, 1878.

And now comes F. G. Hentig, who appears specially & for the purposes of this motion only and for no other purpose, and also comes the complainant herein, by G. C. Clemens, her solicitor, and the motion to set aside the service heretofore made by publication upon the defendant Alfred H. Hentig came on to be heard, and after hearing arguments of counsel and on consideration by the court, said motion is sustained and the service so made upon said defendant Alfred H. Hentig is hereby set aside.

35 And on this day, to wit, June 15, 1878, there was filed in the clerk's office of said court the affidavit of G. C. Clemens in said entitled suit, which said affidavit is in the words and figures following, to wit:

Affidavit of G. C. Clemens.

In the circuit court of the United States for the district of Kansas. In equity.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant, } 2055.
vs.
DANIEL M. ADAMS ET AL., DEFENDANTS. }

UNITED STATES OF AMERICA,
District of Kansas, ss:

G. C. Clemens, being first duly sworn, deposes and says that he is one of the solicitors of the complainant herein; that this suit is brought to enforce a mortgage upon real estate described in the bill and lying wholly within the district of Kansas, and to bar and foreclose claimants and lienors of said real estate. That Alfred H. Hentig is an officer in the United States Army, as affiant is informed, and stationed somewhere in the Indian Territory, and is a non-resident of the State of Kansas, and has not been found within the district of Kansas; that Oscar H. Butterfield and Andrew J. Butterfield are citizens of the State of Vermont, and have not been found either of them within the district of Kansas; that neither of said parties has voluntarily appeared in this suit.

G. C. CLEMENS.

Sworn to and subscribed before me this 15th day of June, A. D. 1878.
A. S. THOMAS, *Clerk*,
By J. N. STRICKLER, *Deputy*.

(Endorsed:) No. 2055. Mary A. Smith, adm'x, &c., vs. Daniel
36 M. Adams et al. Affidavit of G. C. Clemens. Filed June 15, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

And on this day, to wit, Monday, June 17th, 1878, at June term, 1878, of said court, in the record of the proceedings thereof in said entitled suit is the following entry, to wit:

Journal entry.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant,

vs.

DANIEL M. ADAMS, OLIVI A. ADAMS, HIS WIFE; Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, John Freeman, The Citizens' National Bank of Topeka, Herman Markson and Jonothan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas; The Second National Bank of Leavenworth; H. B. Cullum, receiver of the First National Bank of Topeka; Albert G. Edwards, Leonard Mathews and Edward Whitaker, partners under the style of Edwards, Mathews & Co.; S. and H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge & Rolling Mills, The Mastin Bank; Moneton G. Farnhamand Mathew K. Smith, partners under the style of Smith & Farnham; J. S. Scott, Zenas King, Oscar H. Butterfield and Andrew J. Butterfield, defendants. } 2055.

MONDAY, *June* 17, 1878.

37 And now, upon the application of said complainant in open court made, and it being made to appear to the satisfaction of the court that this is a suit brought to enforce a lien on real estate lying wholly within the district of Kansas, and that the said defendants Oscar H. Butterfield and Andrew J. Butterfield are residents of the district of Vermont; and that Alfred H. Hentig is a non-resident of the State of Kansas, and is in the Indian Territory; and that they have not been and cannot be found within the district of Kansas; and that neither of them has voluntarily appeared to this suit; it is now here by the court ordered that the said Oscar H. Butterfield and Andrew J. Butterfield and Alfred H. Hentig do appear and plead, answer, or demur to the complainant's bill herein on or before the third Monday in August, A. D. 1878, and that a copy of this order be served upon the said Oscar H. and Andrew J. Butterfield, in the district of Vermont, on or before the second Monday in July, A. D. 1878; and that a copy of this order be also served on the person or persons, whomsoever they may be, in possession and occupancy of the premises in controversy and on and before the second Monday in July, A. D. 1878. And it is further ordered that this order be published in the Topeka Commonwealth once a week for six consecutive weeks before said third Monday in August, A. D. 1878, and that proof of such publication shall be made by filing in the clerk's office a copy thereof, with the affidavit of proprietor of said newspaper as to its publication.

C. G. FOSTER, *Judge.*

And on this day, to wit, Thursday, August 1st, 1878, the clerk of said court made an entry on the order-book in said entitled suit, which said entry is in the words and figures following, to wit:

38 *Order-book entry.*

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant.
vs.
DANIEL M. ADAMS, OLIVE A. ADAMS, HIS WIFE; Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, John Freeman, The Citizens' Bank of Topeka, Herman Markson and Jonathan Myers, assignees of the King Wrought-Iron Bridge Manufactory and Iron Works of Iola, Kansas, The Second National Bank of Leavenworth, H. B. Cullum, receiver of the First National Bank of Topeka; Albert G. Edwards, Leonard Mathews, and Edward Whittaker, partners under the style of Edwards, Mathews & Co.; S. & H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge and Rolling Mills, The Mastin Bank, Moulton G. Farnham and Mathew K. Smith, under the style of Smith & Farnham; J. S. Scott, Zenas King, Oscar H. Butterfield and Andrew J. Butterfield, defendants. } No. 2055.

Upon application of said complainant and for cause shown it is ordered that the order heretofore made herein on the 17th day of June, A. D. 1878, for service on parties outside of the district of Kansas, be so far altered and amended as to provide that service may be made on the said Oscar H. Butterfield and Andrew J. Butterfield by the marshal of the United States for the district of Vermont, as well as on the occupant of said premises by the U. S. marshal for the district
39 of Kansas, on or before the 10th day of August, A. D. 1878; and that in all other respects said order remains unchanged.

C. G. FOSTER, *Judge.*

(Endorsed:) Filed August 1st, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

And on this day, to wit, August 8, 1878, the complainant, by his solicitor, filed in the clerk' office of said court her replication to plea of Bond in said entitled suit, which said replication is in the words and figures following, to wit:

Replication to plea of Bond.

In the circuit court of the United States for the district of Kansas.
In equity.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant, } 2055.
vs.
DANIEL M. ADAMS ET AL., DEFENDANTS.

The replication of Mary A. Smith, administratrix, &c., complainant, to the plea of Squire Bond, one of the defendants.

This replicant, saving and reserving to herself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the plea of the said defendant, for replication thereunto saith that she doth and will aver, maintain, and prove her said bill to be true, certain, and sufficient in the law to be pleaded unto by the said defendant, and that the plea of the said defendant is uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said plea contained, materially or effectually in law
40 to be replied unto, and not herein or hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays, as in and by her said bill she hath already prayed.

G. C. CLEMENS,
Solicitor for Complainant.

(Endorsed:) No. 2055. Mary A. Smith, administratrix, &c., vs. Daniel M. Adams et al. Replication to plea of Bond. Filed August 8th, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

And on this day, to wit, August 8th, 1878, the complainant, by her solicitor, filed in the clerk's office of said court her replication to plea of Hentig, in said entitled suit, which said replication is in the words and figures following, to wit:

Replication to plea of Hentig.

In the circuit court of the United States for the district of Kansas.
In equity.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant, } 2055.
vs.
DANIEL M. ADAMS ET AL., DEFENDANTS.

The replication of Mary A. Smith, administratrix, &c., complainant, to the plea of F. G. Hentig, one of the defendants.

This replicant, saving and reserving to herself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the plea of the said

41 defendant, for replication thereunto, saith that she doth and will aver, maintain, and prove her said bill to be true, certain, and sufficient in the law to be pleaded unto by the said defendant, and that the plea of the said defendant is uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said plea contained, materially or effectually in the law to be replied unto, and not herein or hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

G. C. CLEMENS,
Solicitor for Complainant.

(Endorsed:) No. 2055. Mary A. Smith, administratrix, &c., vs. Daniel M. Adams et al. Replication to plea of Hentig. Filed August 8, 1878. A. S Thomas, clerk, by J. N. Strickler, deputy.

And on this day, to wit, August 10th, 1878, there was filed in the clerk's office of said court copies of orders in said entitled suit, which said copies of orders, with the endorsements and marshal's return thereon, are in the words and figures following, to wit:

Copies of orders.

In the circuit court of the United States for the district of Kansas.
In equity.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant,
vs.
DANIEL M. ADAMS, OLIVE A. ADAMS,
42 his wife, Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, John Freeman, The Citizens' Bank of Topeka, Herman Markson, and Jonathan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas, The Second National Bank of Leavenworth, H. B. Cullum, receiver of the First National Bank of Topeka, Albert G. Edwards, Leonard Mathews, and Edward Whittaker, partners under the style of Edwards, Mathews & Co., S. & H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge and Rolling Mills, The Mastin Bank, Moulton G. Farnham and Mathew K. Smith, partners under the style of Smith & Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield and Andrew J. Butterfield, defendants. } No. 2055.

And now, upon the application of said complainant in open court made, and it being made to appear to the satisfaction of the court that

is a suit brought to enforce a lien on real estate lying wholly within the district of Kansas, and that the said defendants, Oscar H. Butterfield and Andrew J. Butterfield, are residents of the district of Vermont, and that Alfred H. Hentig is a non-resident of the State of Kansas, and is in the Indian Territory, and that they have not been and cannot be found within the district of Kansas, and that neither of them has voluntarily appeared to this suit, it is now here by the court ordered that the said Oscar H. Butterfield and Andrew J. Butterfield and Alfred H. Hentig do appear and plead, answer, or demur to the complainant's bill herein on or before the third Monday in August, A. D. 1878, and that a copy of this order be served upon the said Oscar H. and Andrew J. Butterfield, in the district of Vermont, on or before the second Monday in July, A. D. 1878, and that a copy of this order be also served on the person or persons, whomsoever they may be, in possession and occupancy of the premises in controversy, and on or before the second Monday in July, A. D. 1878. And it is further ordered that this order be published in the Topeka Commonwealth once a week for six consecutive weeks before said third Monday in August, A. D. 1878, and that proof of such publication shall be made by filing in the clerk's office a copy thereof, with the affidavit of a proprietor of said newspaper as to its publication.

43

(Endorsed:) No. 2055. Mary A. Smith, adm'r, vs. Daniel M. Adams et al. Order for service on absent def'ts. Filed June 17, 1878. A. S. Thomas, clerk.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant,

vs.

DANIEL M. ADAMS, OLIVE A. ADAMS, HIS WIFE, Frederick G. Hentig, Alfred H. Hentig, Squire Bond George Hentig, John Freeman, The Citizens' Bank of Topeka, Herman Markson and Jonathan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas, The Second National Bank of Leavenworth, H. B. Cullum, receiver of the First National Bank of Topeka, Albert G. Edwards, Leonard Mathews, and Edward Whittaker, partners under the style of Edwards, Mathews & Co., S. and H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge and Rolling Mills, The Mastin Bank, Moulton G. Farnham and Mathew K. Smith, under the style of Smith and Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield, defendants. } No. 2055.

44

Upon application of said complainant and for cause shown it is ordered, that the order heretofore made herein on the 17th day of June, A. D. 1878, for service on parties outside of the district of Kansas be so

far altered and amended as to provide that service may be made on the said Oscar H. Butterfield and Andrew J. Butterfield by the marshal of the United States for the district of Vermont, as well as on the occupant of said premises by the U. S. marshal for the district of Kansas on or before the 10th day of August, A. D. 1878, and that in all other respects said orders remains unchanged.

C. G. FOSTER, *Judge.*

(Endorsed:) No. 2055. Mary A. Smith, administratrix, &c., vs. Daniel M. Adams et al. Order altering order made June 17, 1878.
45 Filed August 1, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas do hereby certify the foregoing to be a true, full and perfect copy of order for service on absent defendants, filed June 17, 1878, and order altering order made June 17, 1878, in the suit of Mary A. Smith, administratrix, &c., vs. Daniel M. Adams et al, No. 2055, in said court. In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Topeka in said district of Kansas, this sixth day of August, A. D. 1878.

A. S. THOMAS, *Clerk,*
By J. N. STRICKLER, *Deputy.*

(Endorsed:) No. 2055. Mary A. Smith, adm'r, &c., vs. Daniel M. Adams et al. Copies of orders.

Received this writ this the 6th day of August, A. D. 1878, and served the same at Shawnee County, State & district of Kansas, on the 9th day of August, A. D. 1878, by delivering personally to the within named defendant, Squire Bond, a true and certified copy of this writ with all the endorsements thereon, the said Squire Bond being the occupant and the only occupant of the within described premises.

B. F. SIMPSON,
U. S. Marshal,
By S. P. WADE, *Deputy.*

Marshal's fees, $2.50.

Filed August 10, 1878.

A. S. THOMAS, *Clerk,*
By J. N. STRICKLER, *Deputy.*

And on this day, to wit, August 17, 1878, there was filed in the clerk's office of said court copy of order for service on absent defendants & order altering same in said entitled suit, which said copy of order is
46 in the words and figures following, to wit:

Copy of order for service on absent def'ts.

In the circuit court of the United States for the district of Kansas. In equity.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant,
vs.
DANIEL M. ADAMS, OLIVE A. ADAMS, HIS WIFE, Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, John Freeman, The Citizens' Bank of Topeka, Herman Markson and Jonathan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas, The Second National Bank of Leavenworth, H. B. Cullum, receiver of the First Nat. Bank of Topeka, Albert G. Edwards, Leonard Mathews, and Edward Whittaker, partners under the style of Edwards, Mathews & Co., S. and H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge & Rolling Mills, The Mastin Bank, Moulton G. Farnham and Mathew K. Smith, partners under the style of Smith & Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield and Andrew J. Butterfield, defendants. } No. 2055.

And now upon the application of said complainant in open court made, and it being made to appear to the satisfaction of the court that this is a suit brought to enforce a lien on real estate lying
47 wholly within the district of Kansas, and that the said defendants, Oscar H. Butterfield and Andrew J. Butterfield are residents of the district of Vermont, and that Alfred H. Hentig is a non-resident of the State of Kansas, and is in the Indian Territory, and that they have not been and cannot be found within the district of Kansas, and that neither of them has voluntarily appeared to this suit, it is now here by the court, ordered, that the said Oscar H. Butterfield and Andrew J. Butterfield, and Alfred H. Hentig, do appear and plead, answer, or demur to the complainant's bill herein, on or before the third Monday in August, A. D. 1878, and that a copy of this order be served upon the said Oscar H. and Andrew J. Butterfield in the district of Vermont on or before the second Monday in July, A. D. 1878, and that a copy of this order be also served on the person or persons whomsoever they may be, in possession and occupancy of the premises in controversy, and on or before the second Monday in July, A. D. 1878. And it is further ordered that this order be published in the Topeka Commonwealth once a week for six consecutive weeks before said third Monday in August, A. D. 1878, and that proof of such publication shall be made by filing in the clerk's office a copy thereof, with the affidavit of a proprietor of said newspaper as to its publication.

C. G. FOSTER.

(Endorsed:) No. 2055. Mary A. Smith, adm'r, vs. Daniel M. Adams et al. Order for service on absent defendants. Filed June 17, 1878. A. S. Thomas, clerk.

48 In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant,
vs.
DANIEL M. ADAMS, OLIVE A. ADAMS, HIS wife; Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, John Freeman, The Citizens' Bank of Topeka, Herman Markson and Jonathan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Works, of Iola, Kansas, The Second National Bank of Leavenworth, H. B. Cullum, receiver of the First National Bank of Topeka, Albert G. Edwards, Leonard Mathews, and Edward Whittaker, partners under the style of Edwards, Mathews & Co., S. and H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, the Henbacker Forge & Rolling Mills, The Mastin Bank, Moulton G. Farnham, and Matthew K. Smith, under the style of Smith & Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield, defendants. } No. 2055.

Upon application of said complainant, and for cause shown, it is ordered, that the order heretofore made herein, on the 17th day of June, A. D. 1878, for service on parties outside of the district of Kansas, be so far altered and amended as to provide that service may be made on the said Oscar H. Butterfield and Andrew J. Butterfield, by the marshal of the United States for the district of Vermont, as well as on
49 the occupant of said premises by the U. S. marshal for the district of Kansas, on or before the 10th day of August, A. D. 1878, and that in all other respects said order remains unchanged.

C. G. FOSTER,
Judge.

(Endorsed:) No. 2055. Mary A. Smith, administratrix, &c., vs. Daniel M. Adams, et al. Order altering order made June 17th, 1878. Filed August 1st, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy of the order for service on absent defendants, filed June 17, 1878, and the order altering order filed June 17, 1878, in the suit of Mary A. Smith, adm'r, &c., vs. Daniel M. Adams, et al., No. 2055 in said court. In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this fifth day of August, A. D. 1878.

A. S. THOMAS,
Clerk,
By J. N. STRICKLER,
Deputy.

(Endorsed:) No. 2055. Mary A. Smith, adm'r, &c., vs. Daniel M. Adams, et al. Copy of order for service on absent defendants, & order altering same.

UNITED STATES OF AMERICA,
District of Vermont, ss:

I hereby certify that I am United States marshal within and for the district of Vermont, and that on the 10th day of August, A. D. 1878, at Brattleboro', in said district, I delivered to the within-named Oscar H. Butterfield and Andrew J. Butterfield a certified of this order, with my return thereon endorsed.

GEORGE. P. FOSTER,
U. S. Marshal for Dist. of Vermont.

50 Subscribed & sworn to, this 14th day of August, A. D. 1878, before me.

[SEAL.] B. B. SMALLEY,
Clerk U. S. Circuit Court, Dist. of Vermont.

Filed August 17, 1878.

A. S. THOMAS,
Clerk,
By J. N. STRICKLER,
Deputy.

And on this day, to wit, August 17, 1878, there was filed in the clerk's office of said court a proof of publication in said entitled suit, which said proof of publication is in the words and figures following, to wit:

Proof of publication.

STATE OF KANSAS,
County of Shawnee, ss:

I. N. Baker, being duly sworn, says that he is one of the publishers of the Commonwealth, a weekly newspaper printed and published at the city of Topeka, county of Shawnee, and State of Kansas, and that the printed notice hereto annexed was published in said Commonwealth for seven consecutive weeks, the first publication of said notice being made on the 4th day of July, A. D. 1878; the second on the 11th day of July, A. D. 1878; the third on the 18th day of July, A. D. 1878; the fourth on the 25th day of July, A. D. 1878; the fifth on the 1st day of August, A. D. 1878; the sixth on the 8th day of August, 1878; the seventh on the 15th day of August, 1878; and further he saith not.

I. N. BAKER.

Printer's fees, $32.00.

Subscribed and sworn to before me, this 17th day of August, A. D. 1878.

[SEAL.] C. C. BAKER,
Notary Public.

Notice to absent defendants.

In the circuit court of the United States for the district of Kansas.

In equity.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant,

vs.

DANIEL M. ADAMS, OLIVE A. ADAMS, HIS wife, Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, John Freeman, The Citizens' Bank of Topeka, Herman Markson, and Jonathan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas; The Second National Bank of Leavenworth; H. B. Cullum, receiver of the First National Bank of Topeka, Albert G. Edwards, Leonard Mathews, and Edward Whittaker, partners, under the style of Edwards, Mathews, & Co., S. and H. Brunswick, The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge and Rolling Mills, The Mastin Bank, Moulton G. Farnham, and Mathew K. Smith, partners under the style of Smith & Farnham; J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield, defendants. } No. 2055.

51

And now upon the application of said complainant in open court made, and it being made to appear to the satisfaction of the court that this is a suit brought to enforce a lien on real estate lying wholly within the district of Kansas, and that the said defendants, Oscar H. Butterfield and Andrew J. Butterfield are residents of the district of Vermont, and that Alfred H. Hentig is a non-resident of the State of Kansas, and is in the Indian Territory, and that they have not been and cannot be found within the district of Kansas, and that neither of them has voluntarily appeared to this suit, it is now here by the court ordered that the said Oscar H. Butterfield and Andrew J. Butterfield and Alfred H. Hentig do appear, plead, answer or demur to the complainant's bill herein on or before the third Monday in August, A. D. 1878, and that a copy of this order be served upon the said Oscar H. and Andrew J. Butterfield in the district of Vermont, on or before the second Monday in July, A. D. 1878, and that a copy of this order be served on the person or persons, whomsoever they may be, in possession and occupancy of the premises in controversy and on or before the second Monday in July, A. D. 1878.

52

And it is further ordered that this order be published in the Topeka Commonwealth once a week for six successive weeks before said third Monday in August, A. D. 1878, and that proof of such publication shall be made by filing in the clerk's office a copy thereof with the affidavit of a proprietor of said newspaper as to its publication.

C. G. FOSTER, *Judge.*

BENSON AND PARKINSON, *Ottawa, Kansas,*
Solicitors for Complainant.

G. C. CLEMENS, *Topeka, Kansas,*
Of Counsel.

(Endorsed:) No. 2055. Mary A. Smith, adm'r, &c., vs. Daniel M. Adams et al. Proof of publication. Filed August 17, 1878. A. S. Thomas, clerk, by J. U. Strickler, deputy.

And on this day, to wit, Monday, August 19, 1878, the clerk of said court made an entry on the order book in said entitled suit, which said entry is in the words and figures following, to wit:

Order book.

MARY A. SMITH, ADMINISTRATRIX DE
53 bonis non, with the will annexed, of Julius C. Wright, deceased, complainant, } No. 2055.
vs.
DANIEL M. SMITH ET AL., DEFENDANTS.

Oscar H. Butterfield and Andrew J. Butterfield, two of the defendants in the above entitled suit, having been duly served with an order of said court, and they having failed to plead, answer or demur to the bill of complaint in said suit, as commanded by said court, therefore on motion of G. C. Clemens, solicitor for complainant, it is ordered and decreed that the bill herein be taken pro confesso as to said defendants Oscar H. Butterfield and Andrew J. Butterfield.

And on this day, to wit, August 19, 1878, the defendant A. H. Hentig, by his solicitors, filed in the clerk's office of said court his plea in said entitled suit, which said plea is in the words and figures following, to wit:

Plea of A. H. Hentig.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX DE BONIS
non, with the will annexed, of the estate of Juluis C. Wright, deceased, compl't, } Plea in bar.
vs.
DANIEL M. ADAMS ET AL., DEF'TS.

The plea of Alfred H. Hentig, one of the defendants, to the bill of complaint.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill of complaint mentioned & contained to be true in such sort, manner
54 & forms as the same are therein set forth & alleged, for plea to the whole of said bill or so much & such part of said bill as prays for an injunction or the appointment of a receiver, or that an account may be taken, or for any relief whatever, this defendant says, that said complainant, Mary A. Smith, is not the duly qualified administratrix with the will annexed of the estate of said Julius C. Wright, deceased. Therefore this defendant doth plead the same in bar to said complainant's bill & prays the judgment of this honorable court whether he should be compelled to make any further answer to said bill, & prays to be hence dismissed with his reasonable costs & charges in this behalf most wrongfully sustained.

I certify that in my opinion the foregoing plea of Alfred H. Hentig, defendant, to the bill of complaint of Mary A. Smith, adm'x, &c., complainant, is well founded in point of law and proper to be filed in the above cause.

HENTIG & SPERRY,
Sol'rs for Def't Hentig.

F. G. HENTIG,
Of Counsel.

STATE OF MICHIGAN,
County of Kent, ss:

Alfred H. Hentig, being duly sworn, deposes and says that he has read the foregoing plea to the bill of complaint in this suit; that the same is not interposed for delay, & that it is true in point of fact as he verily believes.

A. H. HENTIG.

Subscribed and sworn to before me this 16th day of August, A. D. 1878.

[SEAL.] BENJ. A. HARLAN,
55 *Notary Public, Kent County, Mich.*

(Endorsed:) No. 2055. Mary A. Smith, administratrix, &c., vs. Daniel M. Adams et al. Plea. Filed August 19, 1878. A. S. Thomas, clerk, by J. U. Strickler, deputy.

And on this day, to wit, August 19, 1878, the complainants, by her solicitors, filed in the clerk's office of said court her replication to plea of A. H. Hentig in said entitled suit, which said replication is in the words and figures following, to wit:

Replication to plea to *A. H. Hentig.*

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of Julius C. Wright, deceased, complainant,
vs.
DANIEL M. ADAMS ET AL., RESPONDENTS.

The special replication of Mary A. Smith, administratrix, &c., complainant, to the plea of Alfred H. Hentig, respondent.

This repliant, saving and reserving unto herself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the plea of the said respondent, for replication thereunto saith that she doth and will aver, maintain, and prove her said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the plea of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without that, that any other matter or thing in the said plea contained materially or effectually in the law to be replied unto, and not herein and hereby well and sufficiently
56 replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, main-

tain and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

G. C. CLEMENS, AND BENSON & PARKINSON,
Solicitor' for Complainant.

G. C. CLEMENS,
Of Counsel.

(Endorsed:) No. 2055. Mary A. Smith, administratrix, &c., vs. Daniel M. Adams et al. Replication to plea of Alfred H. Hentig. Filed August 19, 1878. A. S. Thomas, clerk, by J. U. Strickler, deputy.

And on this day, to wit, Sept. 2, 1878, there was filed in the clerk's office of said court a motion to set aside service, which said motion is in the words and figures following, to wit:

Motion to set aside service.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX, &C.,
vs.
DANIEL M. ADAMS ET AL. } 2055. Motion.

And now comes F. G. Hentig, who appears in this cause specially, & for the purpose of this motion only, and moves the court to set aside the service made upon said Andrew J. Butterfield and Oscar H. Butterfield, by the marshal of the United States for the district of Vermont, and also the order upon which said service was made, for the reason that said order is not the order of the court.

F. G. HENTIG.

(Endorsed:) No. 2055. Mary A. Smith, adm'x, vs. Daniel M. Adams et al. Motion to set aside service. Filed Sept. 2, 1878. A. S. Thomas, clerk, by J. U. Strickler, deputy.

57 And on this day, to wit, rule day, Monday, Sept. 2, 1878, the clerk of said court made an entry on the order book in said entitled suit, which said entry is in the words and figures following, to wit:

Order book entry.

MARY A. SMITH, ADMINISTRATRIX, &C.,
comp't,
vs.
DANIEL M. ADAMS ET AL. } 2055.

Oscar H. Butterfield and Andrew J. Butterfield, having been duly served with an order of said court, and they having failed to plead, answer or demur to the bill of complaint, as therein commanded by said court, therefore, on motion of G. C. Clemens, solicitor for complainant, it is ordered and decreed that the bill of complaint herein be taken pro confesso as to said defendants Oscar H. Butterfield and Andrew J. Butterfield.

And on this day, to wit, rule day, Monday, October 7, 1878, the clerk of said court made an entry in the order book in said entitled suit, which said entry is in the words and figures following, to wit:

Order book entry.

MARY A. SMITH, ADM'X, vs. DANIEL M. ADAMS ET AL. } 2055. In equity.

On motion of complainant, by G. C. Clemens, her solicitor, it is ordered that hearing of the motion of the defendants Oscar H. Butterfield and Andrew J. Butterfield to set aside the order of service of process on them be continued and set down for hearing before the Hon. C. G. Foster, one of the judges of said court, at chambers, in the city of Leavenworth, on Monday, the 14th day of October, 1878, at 6 o'clock p. m., or as soon thereafter as the same can be heard, or at the
58 circuit court held at Leavenworth on the said 14th day of October.

And on this day, to wit, Tuesday, October 15, 1878, at June term, 1878, of said court, in the record of the proceedings thereof in said entitled suit is the following entry, to wit:

Journal entry.

MARY A. SMITH, ADM'X, &C., vs. DANIEL M. ADAMS ET AL. } 2055.

The motion to set aside the service herein upon Andrew J. Butterfield and Oscar H. Butterfield came on to be heard; on consideration whereof, it is ordered by the court that said motion be, and the same is hereby, overruled, and the orders and decrees pro confesso heretofore taken and entered herein against said defendants Andrew J. Butterfield and Oscar H. Butterfield be, and they are hereby, set aside and for naught held, and leave given them to file answer on or before Monday, November 4th, 1878, without prejudice, to hearing at next term.

And on this day, to wit, rule day, Monday, Nov. 4, 1878, the clerk of said court made an entry on the order book of said court in said entitled suit, which said entry is in the words and figures following, to wit:

Order book entry.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX, &C., vs. DANIEL M. ADAMS ET AL. } 2055.

The defendants Andrew J. Butterfield and Oscar H. Butterfield having, at the adjourned term of said court held at the city of Leavenworth October 14th and October 15th, 1878, been ordered to an-
59 swer in the above suit on or before Monday, November 4th, 1878, and having failed so to do, it is ordered that the bill of complaint of said complainant be, and the same is, hereby taken pro confesso as to said defendants Andrew J. Butterfield and Oscar H. Butterfield.

G. C. CLEMENS,
Solicitor for Complainant.

And on this day, to wit, November 19, 1878, the complainant, by her solicitors, filed in the clerk's office of said court papers marked Exhibits A, B, C, and D in said entitled suit, which said papers are in the words and figures following, to wit:

Exhibit A.—Copy of will.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, greeting:

Know ye that having inspected the records and proceedings in the office of the surrogate of our county of Queens, we do find there remaining the last will and testament of Julius C. Wright, late of our said county, deceased, and the proofs and proceedings taken and had in the surrogate's court of our said county relating to the proof thereof in the words and figures following, that is to say:

STATE OF NEW YORK,
County of Queens, ss:

Be it remembered that at a surrogate's court held in and for the county of Queens, by and before Alexander Hagner, surrogate of the said county, on the twenty-eighth day of January, one thousand eight hundred and seventy four, George P. Wright, one of the execu-
60 tors named in a certain instrument in writing purporting to be the last will & testament of Julius C. Wright, deceased, appeared and presented the said instrument for probate, and applied for a citation for the heirs at law and next of kin of the said deceased to attend the probate thereof, and satisfactorily proved that the said deceased, at the time of his death, was an inhabitant of the town of Newtown, in the said county of Queens; that he died in the said town on the twenty-third day of January, one thousand eight hundred and seventy-four; and that he left him surviving, as his only heirs at law and next of kin, the following persons: Seven children, namely, George P. Wright, your petitioner, residing in the town of Newtown, Queens County, New York Charles Wright, residing at Topeka, in the State of Kansas; Edward C. Wright, residing at San Francisco, in the State of California; Mary H. Smith, wife of Edward R. Smith, Julia W. Wright, Fanny T. Wright, and Albert Wright, severally residing in the said town of Newtown. That all of said persons are of full age except the said Albert Wright, and that he is a minor, over the age of fourteen years. That deceased left no widow, no other child or children, nor descendants of any deceased child, him surviving.

Thereupon a citation was duly issued out of the said court, under the seal thereof, directed to the said heirs at law and next of kin, requiring them to attend the probate of the said instrument, returnable on the twenty seventh day of February, one thousand eight hundred and seventy-four, at ten o'clock in the forenoon; and at the surrogate's court held as aforesaid, on the twenty-seventh day of February, one
61 thousand eight hundred and seventy-four, that being the time and place mentioned in the said citation, the said executors appeared and returned the said citation, with proof of the due service thereof upon the said heirs at law and next of kin, which citation and proof of service thereof are on file in the said surrogate's office.

And the surrogate, having ascertained that Albert Wright and heir at law and next of kin of the said deceased, and is a minor and has no

general guardian, Pierpont Potter, of Jamaica, was thereupon duly appointed the special guardian of said minor, for the sole purpose of appearing for him and taking care of his interests in the matter of proving the last will and testament of the said deceased, the said Pierpont Potter having consented in writing to be appointed such guardian, which consent and order of appointment are filed and recorded in this office. The following persons also appeared, to wit, Pierpont Potter, special guardian of said minor, and Charles Wright and Albert Wright in person, and the proceedings were adjourned until the third day of March, 1874, when said Pierpont Potter, special guardian, again appeared, and, no one opposing the probate thereof, due proof having been made of the genuineness of the said instrument propounded for probate, and the subscribing witnesses to the same having been duly sworn and examined by and before the said surrogate, their testimony reduced to writing and signed by them, testified as follows:

QUEENS COUNTY,
Surrogate's Court, ss:

62 In the matter of proving the last will and testament of Julius C. Wright, deceased.

Be it remembered that on this second day of March, in the year of our Lord one thousand eight hundred and seventy-four, before Alexander Hogner, surrogate of the county of Queens, personally appeared John H. Riker, and the said John H. Riker, being by the said surrogate duly sworn and examined, doth depose and say that this deponent was well acquainted with Julius C. Wright, late of the town of Newtown, in said county of Queens, deceased; that he was present as a witness and did see the said Julius C. Wright, deceased, subscribe at the end thereof the instrument now produced and shown to this deponent, purporting to be the last will and testament of the said Julius C. Wright, deceased, bearing date on the 22nd day of November, 1869; that such subscription was made by the testator in the presence of this deponent and of Samuel Riker, the other subscribing witness to the said instrument, and that the said testator at the same time declared the instrument so subscribed by him to be his last will and testament, whereupon this deponent and the said Samuel Riker signed their names at the end thereof, at the request of and in the presence of the said testator, and that the said testator, at the time of executing and publishing the said last will and testament, was of full age, of sound mind and memory, and not under any restraint.

JOHN H. RIKER.

Sworn before me this 2nd day of March, 1874.
ALEX'R HOGNER,
Surrogate.

63 Be it remembered that on this third day of March, 1874, before Alexander Hagner, surrogate of the county of Queens, personally appeared Samuel Riker, and the said Samuel Riker being by the said surrogate duly sworn and examined, doth depose and say that this deponent was well acquainted with Julius C. Wright, late of the town of Newtown, in said county of Queens, deceased; that he was present as a witness and did see the said Julius C. Wright, deceased, subscribe at the end thereof the instrument now produced and shown to this deponent purporting to be the last will and testament of the said Julius C.

Wright, deceased, bearing date on the 22nd day of November, 1869; that such subscription was made by the testator in the presence of this deponent and of John H. Riker, the other subscribing witness to the said instrument, and that the said testator at the same time declared the instrument so subscribed by him to be his last will and testament. Whereupon this deponent and the said John H. Riker signed their names at the end thereof at the request of and in the presence of the said testator, and that the said testator at the time of executing and publishing the said last will and testament was of full age, of sound mind and memory, and not under any restraint.

SAMUEL RIKER.

Sworn before me this third day of March, 1874.

ALEX'R HOGNER,
Surrogate.

QUEENS COUNTY,
Surrogate's Court, ss:

64 In the matter of proving the last will and testament of Julius C. Wright, deceased.

Be it remembered that on this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and seventy-four, before Alexander Hogner, surrogate of the county of Queens, personally appeared Garret J. Garretson, and the said Garret J. Garretson being by the said surrogate duly sworn and examined, doth depose and say that this deponent was well acquainted with Julius C. Wright, late of the town of Newtown, in said county of Queens, deceased; that he was present as a witness and did see the said Julius C. Wright, deceased, subscribe at the end thereof the instrument now produced and shown to this deponent purporting to be a codicil attached to the last will and testament of the said Julius C. Wright, deceased, bearing date on the 21st day of August, 1873; that such subscription was made by the testator in the presence of this deponent and of W. Spencer Wood, the other subscribing witness to the said instrument, and that the said testator at the same time declared the instrument so subscribed by him to be a codicil to his last will and testament. Whereupon this deponent and the said W. Spencer Wood signed their names at the end thereof at the request of and in the presence of the said testator, and that said testator at the time of executing and publishing the said codicil to his last will and testament was of full age, of sound mind and memory, and not under any restraint.

GARRET J. GARRETSON.

65 Sworn before me this 27th day of February, 1874.

ALEX'R HAGNER,
Surrogate.

And the said W. Spencer Wood being by the said surrogate duly sworn and examined doth depose and say that this deponent was well acquainted with Julius C. Wright, late of the town of Newtown, in said county of Queens, deceased; that he was present as a witness and did see the said Julius C. Wright, deceased, subscribe at the end thereof the instrument now produced and shown to this deponent purporting to be a codicil attached to the last will and testament of the said Julius C. Wright, deceased, bearing date on the 21st day of August, 1873; that

such subscription was made by the testator in the presence of this deponent and of Garret J. Garretson above named, the other subscribing witness to the said instrument, and that the said testator at the same time declared the instrument so subscribed by him to be a codicil to his last will and testament. Whereupon this deponent and the said Garret J. Garretson signed their names at the end thereof at the request of and in the presence of the said testator, and that the said testator at the time of executing and publishing the said codicil to his said last will and testament was of full age, of sound mind and memory, and not under any restraint.

W. SPENCER WOOD.

Sworn to before me this 27th day of February, 1874.

ALEX'R HAGNER,
Surrogate.

And the surrogate having duly deliberated on the said testimony doth order and decree that the said instrument consisting of a last will and testament and one codicil thereto be admitted to probate and
66 recorded as and for the last will and testament of Julius C. Wright, deceased, as a will of real and personal estate, which said instruments are in the words and figures following, to wit:

Will.

I, Julius C. Wright, of the town of Newtown in Queens County and State of New York, physician, do make this my last will and testament as follows:

First. I direct my executors, hereinafter named, to pay all my just debts and funeral and testamentary expenses as soon after my decease as may be practicable.

Second. I give and bequeath the income and profits of my estate, real and personal, after the payment of my just debts and funeral and testamentary expenses or of the proceeds thereof, unto my wife, Elizabeth Ann, during her life, for the support of herself and our children, to be applied by her in such manner and in such proportions as she shall deem proper.

Third. I authorize and empower my executors and survivors of them during the life of my wife and with her consent to appropriate from the principal of my estate from time to time such sums of money as in their, his, or her judgment may be necessary for her support or for the support and education of our children, and also with like consent to make advances from the principal of my estate to any of our daughters on their marrying or to any of our sons.

Fourth. On the division of the residue of my estate among my children, as hereinafter provided, I direct that all advances made any of my children, whether by myself or by my executors, be charged
67 against the share of the child to whom such advances shall have been made, but without interest.

Fifth. On the death of my wife, I direct the residue of my real and personal estate, or the proceeds thereof, including, for the purpose of making and equal and fair division, all advances made to my children, whether by myself or by my executor, under the power hereinabove given to them for that purpose, into as many parts or shares as shall equal the number of my children then living and my children then dead, but leaving issue then living, which I dispose of as follows:

One of such equal parts or shares I give, devise, and bequeath absolutely forever unto each of my children then living except my son Charles, first deducting therefrom the advances made to such child, whether by myself or by my executors.

One of such equal parts or shares I give, devise, and bequeath absolutely forever unto the issue then living of each of my children then dead but leaving issue then living, first deducting therefrom the advances made to the parent of such issue, whether by myself or by my executors.

And the remaining equal part or share, first deducting therefrom all advances to my son Charles, whether by myself or by my executors, I give, devise, and bequeath unto my executors hereinafter named, nevertheless to invest the same and keep it invested, and to receive the rents, income, and profit thereof, and apply the same to the use of my son Charles during his natural life, and on his death to convey and distribute the trust fund and property to and among the issue then living of my son Charles absolutely forever, notwithstanding anything in
68 this will contained I authorize and empower my said executor or his successors in the trust, at any time in his or their discretion, to convey or pay over to my son Charles the whole or any part of the property held in trust for him and his issue, whereupon this trust shall cease; as to the property which shall be thus conveyed or paid over to my said son, this power is not to be exercised by my executors or his successor in this trust, unless in his or their judgment the absolute ownership and control of said property will be beneficial to my said son Charles.

Sixth. I authorize and empower my executors and the survivor of them, whether for the more easy division of my estate, or for the purpose of rendering it more productive, or for any reason which may commend itself to their, his, or her judgment as calculated to promote the interests of my estate, to see and dispose of all or any part of the real estate whereof I may be seized or to which I may be in any way entitled at the time of my decease, either at public or private sale, and on such terms and conditions as he, she, or they shall deem best, and on such sale or sales to execute valid deeds therefor to the purchaser thereof.

Seventh. I constitute and appoint my wife Elizabeth Ann and my son George executors of this my will.

Lastly. I hereby revoke all former wills by me made.

In witness whereof I have hereunto set my hand and seal the twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

J. C. WRIGHT. [L. S.]

Signed, sealed, published, and declared by the said Julius C.
69 Wright, the testator, as and for his last will and testament, in our presence, and attested by us, as witnesses, at his request, in his presence and in the presence of each other.

N. B.—The words "or his successors in this trust" and the words "or theirs" having been first interlined in the ninth line of the third page, and the words "or his successors in this trust" and the words "or their" having been also first interlined in fifteenth line of the same page.

JOHN H. RIKER,
135 *E. 46th st., N. Y.*
SAM'L RIKER,
Residing at Newtown, L. I.

CODICIL.

I, Julius C. Wright, of the town of Newtown, in Queens County, and State of New York, physician, do hereby declare this to be a codicil to my last will and testament bearing date the twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-nine, which is hereunto annexed.

First. Being desirous of making some provision for the support and maintenance of my sister, Mary Wright, of Windson, Berkshire County, in the State of Massachusetts, in the event of her surviving me and as some acknowledgment of the obligation which I am under to her for her kindness to me in my youth, I give and bequeath to my said sister, Mary Wright, an annuity of one hundred and fifty-six dollars per year, to commence from the day of my death, and I order and direct my executors, by my said will appointed, to set apart from my estate and invest upon bond and mortgage, or in bonds of the United States or of the State of New York, a sufficient sum to raise this annuity, and pay the same quarter yearly to my said sister, Mary Wright, for and during the remainder of her natural life. I also order and direct my said executor, upon the death of my said sister, to pay out of the fund invested by him for the purpose of raising such annuity, her funeral expenses and physician bills incurred by her in her last sickness.

Second. I declare the devises and bequeaths of my residuary real and personal estate contained in the fifth section of my will to be subject to the annuity herein above given to my said sister, Mary Wright, and it is my will that upon her death the capital sum invested by my executor for the purpose of raising the annuity above bequeathed to her, or that part thereof which shall remain after the payment of her funeral expenses and physician's bills as above directed, shall be disposed of in the same manner as is provided in said fifth section of my will for the disposition of the residue of my real and personal estate.

In testimony whereof I have hereunto subscribed my name and affixed my seal this twenty-first day of August, in the year of our Lord one thousand eight hundred and seventy-three.

J. C. WRIGHT. [L. S.]

Witnesses:
W. SPENCER WOOD, *Newtown, L. I.*
GARRET J. GARRETSON, *Newtown, L. I.*

On this twenty-first day of August, in the year one thousand eight hundred and seventy-three, the above-named testator, Julius C. Wright, in our presence subscribed and sealed the foregoing instrument, and declared the same to be a codicil to his last will and testament, and we thereupon, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

W. SPENCER WOOD, [L. S.]
Newtown.
GARRET J. GARRETSON, [L. S.]
Newtown.

STATE OF NEW YORK,
County of Queens, Surrogate's Court, ss:

Recorded the foregoing last will and testament of Julius C. Wright, deceased, consisting of a last will and testament and one codicil thereto,

as a will of real and personal estate, together with the proceedings, proofs, and examinations taken and had in the surrogate's court in the said county of Queens relating to the said last will and testament and codicil thereto, which record is signed and hereby certified by me pursuant to the provisions of the revised statutes of the State of New York, the third day of March, one thousand eight hundred and seventy-four.

ALEX'R HOGNER,
Surrogate.

All of which we have caused by these presents to be exemplified and the seal of the surrogate's court of our said county of Queens to be hereunto affixed.

Witness Alexander Hagner, surrogate of our said county, at the surrogate's office, in Jamaica, in our said county, the 28th day of August, 1877.

[SEAL.] ALEX. HOGNER,
Surrogate.

STATE OF NEW YORK,
County of Queens, ss:

I, Alexander Hogner, surrogate of the said county of Queens and sole judge of the surrogate's court in and for said county, do hereby certify that the foregoing exemplification is in due form, and by
72 the proper officer in charge by law of the record exemplified, and that said court has no clerk.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the surrogate's office, in Jamaica, in said county, the 28th day of August, 1877.

[SEAL.] ALEX. HOGNER,
Surrogate.

(Endorsed:) Exhibit A. Exemplified copy of the last will and testament, proofs, &c., of Julius C. Wright, dec'd. Filed January 9th, 1878. Newton Mann, probate judge. Recorded in book of wills at page 473, 472, 471, 470, 469, 468, 467, 466, 465, and 464. Newton Mann, probate judge. No. 2055. Filed Nov. 19, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

EXHIBIT B.

The people of the State of New York, by the grace of God, free and independent, to all to whom these presents shall come or may concern, greeting:

Know ye, that having inspected the records and proceedings in the office of the surrogate of our county of Queens, we do find there remaining letters administration with the will annexed of the goods, chattels, and credits of Julius C. Wright, left unadministered in the words and figures following, that is to say:

The people of the State of New York to Mary A. Smith, of the town of Newtown, Queens County, N. Y., a child of Julius C. Wright, send greeting:

Whereas Julius C. Wright, lately departed this life, having
73 previously duly made and executed his last will and testament;
And whereas said will was on the third day of March, in the

year one thousand eight hundred and seventy-four, duly admitted to probate by the surrogate of the county of Queens, and whereas the executor in said will named George P. Wright, and to whom letters testamentary thereunder were duly issued on the fourth day of March, 1874, is dead, and Elizabeth Ann Wright, the only other executrix in said will named, but who never qualified as such, is also dead; and whereas the said Mary A. Smith is a child of said deceased, and there are none nearer next of kin of said deceased;

And whereas the said Mary A. Smith has duly executed and filed the bond by law required, and whereas the said Julius C. Wright, at or immediately previous to his death, was an inhabitant of the town of Newtown, in the county of Queens, by means whereof the proving and registering of said will, and the ordering and granting administration of all and singular the goods, chattels, and credits whereof the said testator died possessed in the State of New York, and also the auditing, allowing, and final discharging the account thereof doth appertain unto us; and we being desirous that said will should be observed and performed, and that the goods, chattels, and credits of said testator should be well and faithfully administered, applied, and disposed of, do grant unto you, the said Mary A. Smith, full power and authority by these presents to administer and faithfully to dispose of all and singular the said goods, chattels, and credits, and to ask, demand, recover, and receive the debts which unto the said testator whilst living and at the time of his death did belong, and to pay the debts which the
74 said testator did owe as far as such goods, chattels, and credits will thereto extend and the law require, hereby requiring you to observe and perform the last will and testament, and to observe and perform all the duties to which you would have been subject if you had been named executrix thereof.

And we do by these presents depute, constitute, and appoint you, the said Mary A. Smith, administratrix with the will annexed of all and singular the goods, chattels, and credits which were of said Julius C. Wright, deceased, left unadministered.

In testimony whereof we have caused the seal of office of our said surrogate to be hereunto affixed.

Witness Hon. Alexander Hogner, surrogate of said county, at the surrogate's office, in the village of Jamaica, this 28th day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

[L. S.] ALEX. HOGNER,
Surrogate.

All of which we have caused by these presents to be exemplified and the seal of the surrogate court of our said county of Queens to be hereunto affixed.

Witness Hon. Alexander Hogner, surrogate of our said county, at the surrogate's office, in Jamaica, in our said county, the fourth day of September, 1877.

[SEAL.] ALEX. HOGNER,
Surrogate.

STATE OF NEW YORK,
County of Queens, ss:

I, Alexander Hogner, surrogate of the said county of Queens and sole judge of the surrogate's court in and for said county, do hereby certify that the foregoing exemplification is in due form, and by the proper officer in charge by law of the record exemplified, and
75 that said court has no clerk.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the surrogate office in Jamacia, in the said county, the 4th day of September, 1877.

[SEAL.] ALEX'R HAGNER,
Surrogate.

(Endorsed:) Exhibit B, exemplified copy of letters administration with the will annexed of the goods, chattels, and credits, left unadministered, of Julius C. Wright. Filed January 9th, 1878. Newton Mann, probate judge. No. 2055. Filed Nov. 19, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

EXHIBIT C.

STATE OF NEW YORK,
County of Queens, Surrogate's Office, ss:

I, Alexander Hagner, surrogate of the county of Queens, do certify that I have compared the preceeding with the original record of letters administration with the will annexed as the same are on record in my office in book of special letters of administration number 2, page 373, &c., February 28th, one thousand eight hundred and seventy-seven, and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal at Jamaica, in said county, this 20th day of March, 1877.

[SEAL.] ALEX'R HAGNER,
Surrogate.

The people of the State of New York to Mary A. Smith, of the town of Newtown, Queens County, New York, a child of Julius C. Wright, send greeting:

Whereas Julius C. Wright, lately departed this life, having previously duly made and executed his last will and testament;

76 And whereas said will was on the third day of March, in the year one thousand eight hundred and seventy-four, duly admitted to probate by the surrogate of the county of Queens; and whereas the executors in said will named George P. Wright, and to whom letters testamentary thereunder were duly issued on the fourth day of March, 1874, is dead, and Elizabeth Ann Wright, the only other executrix in said will named, but who never qualified as such, is also dead; and whereas the said Mary A. Smith is a child of said deceased, and there are none nearer next of kin of said deceased;

And whereas the said Mary A. Smith has duly executed and filed the bond by law required; and whereas the said Julius C. Wright, at or immediately previous to his death, was an inhabitant of the town of Newtown, the county of Queens, by means whereof the proving and registering of said will, and the ordering and granting administration of all and singular the goods, chattels, and credits whereof the said testator pos'essed in the State of New York, and also the auditing, allowing, and final discharging the account thereof doth appertain unto us, and we being desirous that said will should be observed and performed, and that the goods, chattels, and credits of said testator should be well and faithfully administered, applied, and disposed of, do grant unto you, the said Mary A. Smith, full power and authority by these presents to administer and faithfully to dispose of all and singular the

said goods, chattels, and credits, and to ask, demand, recover, and receive the debts, which unto the said testator whilst living, and at the time of his death, did belong, and to pay the debts which the said testator did owe, as far as such goods, chattels, and credits will
77 thereto extend and the law require, hereby requiring you to observe and perform the last will and testament, and to observe and perform all the duties to which you would have been subject if you had been named executrix thereof.

And we do by these presents depute, constitute, and appoint you, the said Mary A. Smith, administratrix with the will annexed of all and singular the goods, chattels, and credits which were of said Julius C. Wright, deceased.

In testimony whereof we have caused the seal of office of our said surrogate to be hereunto affixed.

Witness Hon. Alexander Hogner, surrogate of said county, at the surrogate's office in the village of Jamaica, this 28th day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] ALEX'R HOGNER,
Surrogate.

(Endorsed:) Exhibit C. Surrogate's court. Letters of administration cum testamento annexo granted to Mary A. Smith, upon the estate of Julius C. Wright, deceased. Filed January 9th, 1878. Newton Mann, probate judge. No. 2055. Filed Nov. 19, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

EXHIBIT D.

The people of the State of New York, by the grace of God free and independant, to all to whom these present shall come or may concern, greeting:

Know ye that having inspected the records and proceedings in the office of the surrogate of our county of Queens, we do find there remaining the bond in the matter of the administration, with the will annexed, of the goods, chattels, and credits, left unadministered, of
78 Julius C. Wright, which is in the words and figures following, that is to say:

Know all men by these presents that we, Mary A. Smith, of the town of Newtown, in Queens County, and State of New York, wife of Edward R. Smith; Jane Smith, of the said town of Newtown, widow of Isaac Smith, deceased, and Sarah A. Wright, of the said town of Newtown, widow of George P. Wright, deceased, are held and firmly bound unto the people of the State of New York in the sum of nine thousand dollars lawful money of the United States of America, to be paid to the said people, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seal, dated the 23 day of February, one thousand eight hundred and seventy-seven.

The condition of this obligation is such, that if the above-bounden Mary A. Smith shall faithfully execute the trust reposed in her as the administratrix of all and singular the goods, chattels, and credits of Julius C. Wright, late of the town of Newtown, in the county of Queens, deceased, annexed with the last will and testament of the said deceased, and also obey all the orders of the surrogate of the said county of Queens

touching the administration of the estate committed to her, then this obligation to be void; else to remain in full force and virtue.

MARY A. SMITH. [L. S.]
JANE SMITH. [L. S.]
SARAH A. WRIGHT. [L. S.]

Sealed and delivered in the presence of—
GARRET J. GARRETSON,
As to Mary A. Smith & Jane Smith,
and CHARLES M. KIRBY,
As to Sarah A. Wright.

79 QUEENS COUNTY, *ss:*

On the twenty-sixth day of February, A. D. 1877, before me personally appeared Mary A. Smith, wife of Edward R. Smith, and Jane Smith, widow of Isaac Smith, deceased, known to me to be two of the individuals described in and who executed the foregoing bond, and they severally acknowledged to me that they executed the same, and the said Mary A. Smith on a private examination by me made separate and apart from her husband, acknowledged to me that she executed the said bond freely and without any fear or compulsion of or from her said husband.

GARRET J. GARRETSON,
Notary Public in and for Queens Co.

STATE OF NEW YORK,
City and County of New York, ss:

On the twenty-seventh day of February, one thousand eight hundred and seventy-seven, before me personally appeared, S. A. Wright, to me known to be one of the individuals described in and who executed the foregoing bond and acknowledged to me that she executed the same.

CHARLES M. KIRBY,
Notary Public appointed for Queens County and qualified to take the proof and acknowledgment of deeds, &c., in the City and County of New York.

STATE OF NEW YORK,
County of Queens:

Jane Smith, residing at Newtown, in the said county, the surety in the annexed recognizance, being duly sworn, deposes and says that she owns in her own right, real estate in the city of Brooklyn, in
80 Kings County and State of New York, consisting of one equal undivided half part of fifteen lots of land, with the buildings thereon, situated on the southerly side of Myrtle avenue, between Lewis avenue and Tates' avenue, and that such undivided half part is of the value of not less than ten thousand dollars, and is subject to no incumbrance, and that she owns personal estate in the town of Newtown, in the said county of Queens, and that its value is not less than five thousand dollars; that it consists of bonds and mortgages, railroad bonds and other securities, and is subject to no incumbrance; that there are no unsatisfied judgments or executions against her, and that she is under no recognizance, and that she is worth in good property not less than fifty thousand dollars, over and above all debts and liabilities and lawful claims upon her property, and of property exempt from execution.

JANE SMITH.

Sworn to before me this 26th day of February, 1877.
GARRET J. GARRETSON,
Notary Public for Queens Co.

STATE OF NEW YORK,
County of New York, city of New York, ss:

Sarah A. Wright, residing in the town of Newton, in Queens County, the surety in the annexed recognizance, being duly sworn, deposes and says that she owns in his own right, real estate in the said town, consisting of lots of land in said town and the same is of the value of not less than five hundred dollars, and is subject to no incumbrance, and that she owns personal estate now in the city of New York, and that its value is not less than ten thousand dollars; that it consists of first mortgage railroad bonds and is subject to no incumbrance; that there are no unsatisfied judgments or executions against her, and that she
81 is under no recognizance, and that she is worth in good property not less than ten thousand dollars over and above all debts, liabilities, and lawful claims upon her property and property exempt from execution.

SARAH A. WRIGHT.

Sworn to before me this 27th day of Febr'y, 1877.

CHARLES M. KIRBY,
Notary Public appointed for Queens County and qualified to administer affidavits in the City and County of New York.

I hereby approve of the foregoing bond as to its form, the manner of execution, and the sufficiency of the sureties therein.

Jamaica, Febr'y 28th, 1877.

ALEX'R HOGNER,
Surrogate.

STATE OF NEW YORK,
City and County of New York, ss:

I, Henry A. Gumbleton, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that Charles M. Kirby has filed in the clerk' office of the county of New York, a certified copy of his appointment as notary public for the county of Queens, with his autograph signature, and was at the time of taking the annexed acknowledgment duly authorized to take the same, and that I am well acquainted with the handwriting of said notary public and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 27th day of February, 1877.

[SEAL.] HENRY A. GUMBLETON, *Clerk.*

82 All of which we have caused by these presents to be exemplified and the seal of the surrogate's court of our said county of Queens to be hereunto affixed.

Witness Hon. Alexander Hogner, surrogate of our said county, at the surrogate's office, in Jamaica, in the said county, the 4th day of September, 1877.

[SEAL.] ALEX. HOGNER,
Surrogate.

STATE OF KANSAS,
County of Queens, ss:

I, Alexander Hogner, surrogate of the said county of Queens, and sole judge of the surrogate's court in and for said county, do hereby certify that the foregoing exemplification is in due form and by the proper officer in charge by law of the record exemplified and that said clerk has no court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at surrogate's office, in Jamaica, in said county, the 4th day of September, 1877.

ALEX'R HOGNER,
Surrogate.

(Endorsed:) Exhibit D. Exemplified copy of bond in the matter of administration with the will annexed of the goods, chattels, and credits left unadministered of Julius C. Wright. Filed January 9, 1878. Newton Mann, probate judge. No. 2055. Filed Nov. 19, 1878. A. S. Thomas, clerk. By J. N. Strickler, deputy.

And on this day, to wit, Nov. 29, 1878, the defendants, Andrew J. Butterfield and Oscar H. Butterfield, filed in the clerk's office of said court, their motion for leave to answer in said entitled suit, which said motion is in the words and figures following, to wit:

83 *Motion for leave to answer.*

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADM'R, &C.,
vs.
DANIEL M. ADAMS ET AL.

Now comes the defendants, Andrew J. Butterfield and Oscar H. Butterfield, and moves the court for leave to file their answer in the above-entitled cause; affidavits will be issued in support of the motion.

HENTIG & SPERRY,
Sol'rs for Def'ts, Butterfield & Butterfield.

(Endorsed:) No. 2055. Mary A. Smith, adm'x, Daniel M. Adams et al. Motion. Filed Nov. 29, 1878. A. S. Thomas, clerk.

And on this day, to wit, Dec. 9, 1878, the defendants, F. G. Hentig and Squire Bond, filed in the clerk's office of said court their motion to dismiss bill in said entitled suit, which said motion is in the words and figures following, to wit:

Defendants' motion to dismiss bill.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADM'*r*, &C., COMP'T,
vs.
DANIEL M. ADAMS ET AL., DEF'T'S.

Comes now the defendants, F. G. Hentig & Squire Bond, and moves the court to dismiss the bill of the said compl't, for reason that no replications have been filed to the pleas of the defendants, F. G. Hentig and Squire Bond, within the time allowed by the court, to wit, April 10th, A. D. 1878.

84 HENTIG & SPERRY,
Sol'rs for Def'ts, F. G. Hentig & Squire Bond.

(Endorsed:) 2055. Mary A. Smith, adm'*r*, vs. Daniel M. Adams et al. Def't's motion to dismiss bill. Filed Dec. 9, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

And on this day, to wit, Dec. 14, 1878, there was filed in the clerk's office of said court, the affidavit of F. G. Hentig, defendant in said entitled suit, which said affidavit is in the words and figures following, to wit:

Affidavit of F. G. Hentig.

In the circuit court of the United States for the district of Kansas.

STATE OF KANSAS,
Shawnee County, ss:

I, F. G. Hentig, having been first duly sworn, say that I am one of the attorneys for the defendants, Alfred H. Hentig and A. J. and Oscar H. Butterfield, in the suit of Mary A. Smith, administratrix, vs. D. Adams et al.; that affiant, as attorney for said defendants, on or about the 1st of October, 1878, made a proposition for a compromise of the said suit, which said proposition was duly accepted by the attorneys, Benson & Parkinson, who appear for the plaintiff, Mary A. Smith, as will fully appear by their letters to affiant of the 10 & 17 of October, 1878, hereto attached, marked A & B, as a part of this affidavit, and affiant believing that said suit would be settled on the terms set out in said letters and his said proposition, neglected to file the answers at the rule day on the *the* 1st Monday of November, 1878, the time set by the court.

Affiant further says that he had no notice otherwise, until on the 21st day of November, when he received a letter from the said
85 Benson & Parkinson, informing affiant that the said proposition would not be accepted; said letter is hereto attached, marked C, and a part of this affidavit.

Affiant further says, that he knows that his clients have a good defence to the said action of the plaintiff, and can and will show to the court, if permitted, that the said note and mortgage in the bill mentioned, were duly settled and paid to George P. Wright, the executor of the estate of Julius C. Wright, dec'd, that affiant did not discover the evidence to sustain this fact until within the last few days and since the 1st Monday in Nov. last; that the said Julius C. Wright departed this life a resident of Newtown, State of New York, and that his executor qualified and administ'ed upon his estate at that place; that affiant had no opportunity of discovering the facts above stated until very recently; that he makes this affidavit in support of his motion to the court to be permitted to now file the answer of the said A. J. and Oscar H. Butterfield.

F. G. HENTIG.

Sworn to and subscribed before me, this the 28th day of November, 1878.

A. S. THOMAS,
Clerk.

A.

[Law office of Benson & Parkinson. A. W. Benson. W. L. Parkinson.]

OTTAWA, KANSAS, 10*th October*, 1878.

F. G. HENTIG, Esq., *Topeka, K's:*

DEAR SIR: We have your postal of 7th inst. Have been expecting to visit your city soon & have in consequence delayed writing to
86 you in reference to the Dan. Adams foreclosure suit.

Our clients have very reluctantly consented to accept your proposition as contained in yours of July 18th last, that is to consent to a decree in favor of A. H. Hentig, and surrender to him tax certificates Nos. 111, 610 & 205, now held by the administratrix, Mrs. Smith, & he (Hentig) pay us $2,500 and all costs of suit, except attorney's fees, upon the condition that said sum of $2,500 be paid us by Nov. 1st inst. We are prepared to make any agreement or stipulation to carry the arrangement into effect that you may suggest or require.

Mrs. Smith is *is* very anxious to have her money by Nov. 1st.

Hoping to hear from you soon, we are,

Very resp'et' yours,

BENSON & PARKINSON.

EXHIBIT B.

[Law office of Benson & Parkinson.]

OTTAWA, KANSAS, *Oct.* 17, 1878.

F. G. HENTIG, Esq., *Topeka, K's:*

DEAR SIR: We have yours of 12th inst., including copies of stipulation and agreement in the case of Mary A. Smith, adm'x, &c., v. Dan. Adams et als. in the U.S. circuit c't for the dis't of K's. The stipulation embodies, we think, the proposition contained in yours of July last.

You ask us to agree to procure an order of Queens Co., N. Y., surrogate court, authorizing Mrs. Smith to enter into and execute this contract. We have no doubt such an order can be had, and have written Mrs. S. accordingly. We have questioned the propriety, however, of our
87 entering into an absolute agreement to procure such an order.

We have therefore submitted you' stipulation to Mrs. Smith herself, and have no question but the order will be obtained, and the contract faithfully carried out by her. We must therefore ask the delay consequent upon hearing from our client. We think the matter is understood between us, and that upon the receipt of an answer of ours of to-day to Mrs. Smith we can forward you the executed stipulation & agreement.

Very respect'ly,

BENSON & PARKINSON.

C.

[Law office of Benson & Parkinson.]

OTTAWA, KANSAS, *Nov. 21st,* 1878.

F. G. HENTIG, Esq., *Topeka, K's:*

DEAR SIR: We have now to inform you that we submitted your stipulation for settlement in the case of Mary Smith, admixtr atrix, &c., v. Dan Adams et als., in the U. S. circuit court, to our clients, or pr. information contained in ours to you of Oct. 17. We have been expecting its return duly executed and with the proper order from the surrogate court of Queen Co., N. Y. Indeed we were informed by our client that some delay would be necessary in order to procure the surrogate's order consequent upon giving the proper notices, &c.

We are now in receipt of a letter from our client declining to accept the offer made, and which, we informed you, would, we thought, be accepted and duly carried into effect.

88 In answer to the proposition first submitted by you our client submitted the following:

"In case you can obtain $2,500 (say twenty-five hundred dollars), together with the disbursements in the suit advanced by her, and for yourselves the amount of your costs and charges, and your disbursements not already paid, so that the administratrix may realize from the claim all her disbursements in the suit, and in addition $2,500, less only the amount paid for arrears of taxes against the mortgaged property."

Our client now declines to accept anything less than the amount involved in this proposition; that is, the payment of $2,500 and all costs and charges, including attorney's fees, &c., and Mrs. Smith to surrender the tax certificates now held by her.

One of the heirs to the Wright estate has lately been to your city, we believe, and upon an examination of the mortgaged premises, &c., has advised Mrs. Smith that your last proposition cannot consist'ly with the best interests of the estate be accepted by her.

We regret that there has been any occasion for this seeming "hitch" in the cause we supposed was leading to speedy settlement of this case; but so it is.

Very respectfully yours,

BENSON & PARKINSON.

(Endorsed:) No. 2055. Mary A. Smith, adm'r, &c., vs. Daniel M. Adams et al. Affidavit of F. G. Hentig. Filed Dec. 14, 1878. A. S. Thomas, clerk.

And on this day, to wit, Saturday, December 14, 1878, at the November term, 1878, of said court, in the record of the proceedings thereof in said entitled suit, is the following entry, to wit:

89 *Journal entry.*

MARY A. SMITH, ADMINISTRATRIX, &C., v. DANIEL M. ADAMS ET AL. } 2055.

Now come the parties herein, by their solicitors, and on motion of defendants, Andrew J. Butterfield and Oscar H. Butterfield, by Hentig & Sperry, their solicitors, it is ordered by the court that leave be, and is, given said defendants to file answer by January rules, and case set for hearing on the 1st Monday of March, 1879.

And on this day, to wit, Dec. 14, 1878, the defendants Andrew J. Butterfield and Oscar H. Butterfield filed in the clerk's office of said court their answer in said entitled suit, which said answer is in the words and figures following, to wit:

Answer of Andrew J. Butterfield and Oscar H. Butterfield.

In the circuit court of the United States for the district of Kansas.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of the estate of Julius C. Wright, deceased, complainant,
vs.
DANIEL M. ADAMS ET AL., DEFENDANTS.

The joint & several answers of the defendants Andrew J. Butterfield & Oscar H. Butterfield, two of the defendants to the bill of complaint of Mary A. Smith, admi'x, &c.

These defendants, now and all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, and uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised is material or necessary
90 for them to make answer to, severally answering, say that these defendants are the owners in fee simple of the following described lands, to wit: All that tract or parcel of land situate in the county of Shawnee, and State of Kansas, bounded and described as follows: commencing at the northeast corner of reserve No. two (2) of the Kansas half-breed Indian lands; thence running west twenty-four and one-half (24½) chains; thence south to the Kansas River; thence east to the southeast corner of said reserve; thence north to the place of beginning, except, however, seventy-two (72) acres off the north end thereof, containing one hundred and twenty-eight (128) acres; the same lands described in complainant's bill of complaint. And these defendants, further answering, say that they have been informed that the note and mortgage sued on in this action by the complainant is not the property of the said estate of Julius C. Wright, deceased, but that the same is the property of the defendant Daniel M. Adams, and was executed and recorded by the said Daniel M. Adams for the purpose of cheating & defrauding his creditors, & particularly these defendants, and these defendants believe said information to be true.

And for a second and further defence these defendants say that the note sued upon in this action has been duly paid to George P. Wright, executor of the last will and testament of Julius C. Wright, deceased, as appears by the inventory and his final settlement, copies of which are hereto attached, marked Exhibits A & B.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court may direct, and asks for their costs in this behalf sustained.

HENTIG AND SPERRY,
91 *Sol'rs for Defendants A. J. and O. H. Butterfield.*

STATE OF VERMONT,
County of Windham, ss:

Andrew J. Butterfield and O. H. Butterfield being duly sworn, on oath say that they are two of the above-named defendants, and having read the foregoing answer and know the contents thereof, and that the statements therein are true, except such as are stated upon information, and as to such we believe them to be true.

O. H. BUTTERFIELD.
A. J. BUTTERFIELD.

Subscribed & sworn to before me this 8th day of November, A. D. 1878.
ROYAL TYLER,
U. S. Com'r Dist. Vt.

EXHIBIT A.

STATE OF NEW YORK,
County of Queens, ss:

George P. Wright, the executor of the last will and testament of Julius C. Wright, late of the town of Newtown, in the said county of Queens, deceased, do solemnly swear and declare that the next inventory is in all respects just and true; that it contains a true statement of all the personal property of said deceased which has come to my knowledge, and particularly all money, bank bills, and other circulating medium belonging to the said deceased, and of all just claims of the said deceased against me, according to the best of my knowledge.
GEO. P. WRIGHT.

Sworn before me this 19th day of June, 1874.
EDGAR S. EGERTON,
Notary Public, Queens County.

92 COUNTY OF QUEENS, *ss:*

I, Cornelius R. Losee, an appraiser, duly appointed by the surrogate of the county of Queens, do solemnly swear and declare that I will well, truly, honestly, and impartially appraise the personal property of Julius C. Wright, late of the county aforesaid, deceased, which shall for that purpose be exhibited to me, to the best of my knowledge and ability.
C. R. LOSEE.

Sworn before me this 15th day of June, 1874.
WILLIAM H. GORDON,
Notary Public, Queens County.

COUNTY OF QUEENS, *ss:*

I, D. Sackett Moore, an appraiser, duly appointed by the surrogate of the county of Queens, do solemnly swear and declare that I will well, truly, honestly, and impartially appraise the personal property of Julius C. Wright, late of the county aforesaid, deceased, which shall for that purpose be exhibited to me, to the best of my knowledge and ability.
D. SACKETT MOORE.

Sworn before me this 15th day of June, 1874.
WILLIAM H. GORDON,
Notary Public, Queens County.

A true and perfect inventory of all and singular the goods, chattels, and credits of Julius C. Wright, late of the town of Newtown, in the county of Queens, deceased, made by George P. Wright, the executor, &c., &c., of the said deceased, with the aid of Cornelius R. Losee & D. Sackett Moore, appraisers appointed by the surrogate of the county of Queens aforesaid, duly qualified, and after service of notice as the law directs on the legatees and next of kin of the said deceased on the ninth day of June, A. D. 1874:

92 *Inventory of personal property of J. C. Wright, dec'd.*

$4,000,	note of Chas. A. Wright.
1,000,	" " " "
500,	" " " "

500,	receipt of cash.
450,	" " E. C. Wright.
1,000,	note of G. P. Wright.
1,800,	mort. of J. C. Douglass & wife.
8,000,	" " Fairchild & Pierce.
5,000,	" " Claudius B. Brace.
1,500,	" " Thos. S. Towne.
1,680,	" " Sam'l F. Atwood & wife.
3,320,	" " Russell & Atwood.
3,250,	" " Elizabeth F. Norton.
3,250,	First Congregational Church.
4,000,	Eliza J. Wilson & husband.
5,000,	" " Daniel M. Adams.
2,500,	" John M. Gallagher.
2,500,	" " Daniel Martin.
7,000,	" Central R. R. stock of N. Jersey.
500,	note of Geo. B. Powell & wife.
453 31,	am't of auction sale.
$57,203 31.	

C. R. LOSEE.
D. SACKETT MOORE.

STATE OF NEW YORK,
County of Queens, ss:

I, Alexander Hagner, surrogate of the said county of Queens and sole judge of said court in and for said county, do hereby certify that I have compared the preceding with the original inventory as the same
94 is on file in my office, bearing date the 19th day of June, 1874; that the same is a correct transcript therefrom and of the whole of such original.

I further certify that the above attestation is in due form and that the said surrogate court has no clerk, and that the original papers are not permitted to be removed from my office.

Witness my hand and official seal of office this 18th day of March, 1879.

[SEAL.] ALEX. HAGNER,
Surrogate.

(Endorsed:) Inventory estate of Julius C. Wright, deceased. Filed June 19, 1874. Alex. Hagner, surrogate.

EXHIBIT B.

At a surrogate's court held in and for the county of Queens, at the surrogate's office, in the village of Jamaica, in said county, on the 23rd day of April, in the year 1875. Present, Alexander Hagner, surrogate.

In the matter of the final accounting of George P. Wright, the executor of the last will and testament of Julius C. Wright, late of the town of Newtown, deceased.

George P. Wright, the executor of the last will and testament of Julius C. Wright, late of the town of Newtown, deceased, having on the eighth day of March last presented an application for a final settlement of his account as executor aforesaid, and 12 months having elapsed since the granting of letters testamentary to him, the surrogate issued a cita-

tion to all persons interested in the estate of the said deceased to attend such final settlement, on the 19th day of April, 1875, at the surrogate's office aforesaid, at 9 o'clock in the forenoon of that day.

On the said 19th day of April, 1875, the said citation having
95 been returned with due proof of the service thereof on George P. Wright, Charles Wright, Edward C. Wright, Mary H. Smith, wife of Edward R. Smith, Julia W. Amerman, wife of John W. Amerman, Fanny S. Wright and Albert Wright, the only children of said deceased, and also legatees under the said last will and testament; and Mary Wright, the sister of said deceased, and also a legatee under the said last will and testament, all of whom are of full age, they being the only persons mentioned in the petition of said executor as having any interest in the estate of said deceased; and the said executor appeared in person, and the proceedings herein were adjourned to this 23rd day of April, 1875; and on the said 23rd day of April, 1875, the said executor appeared in person and filed his account duly verified with the vouchers in support thereof; and no one else appearing, and the said surrogate having examined the said accounts of such executor and found the same correct, doth order, adjudge and decree that the said accounts be, and the same are hereby, finally settled and allowed.

Summary statement.

The said executor is charged with the amount of inventory		$57,203 31
Increase		3,535 00
Total		$60,738 31
The said executor is credited with the amount of funeral expenses and expenses of administration and the debts of the deceased	$8,855 70	
Amount of interest paid to Miss Mary Wright	195 00	
Am't of note incorrectly inventoried	500 00	9,550 70
		51,187 61
Executor's commissions		782 38
Leaving a balance of		$50,405 23
96 For distribution & to pay the expenses on this accounting *expenses on accounting:*		
E. S. Egerton, preparing papers	$6 50	
" " " decree	10 00	
John Hendrickson, serving citation on accounting	7 00	23 50
		50,381 73
And the surrogate doth further order, adjudge and decree that the said executor, out of the said balance of $50,381.73, invest the sum of	$2,500 00	
on good and approved bond and mortgage, or in bonds of the United States or State of New York, and out of the income derived therefrom pay unto Mary Wright the		

sum of one hundred and fifty-six dollars per year during the term of her natural life, according to the provisions of the codicil attached to the said last will and testament; and out of the balance of the income derived therefrom said executor is directed to pay the taxes which may be assessed upon the said amount. And the surrogate doth further order, adjudge and decree that after the death of the said Mary Wright, said executor distribute the said sum of $2,500, and the accumulated interest thereon, to and among the legatees as directed by the said last will and testament.

And the surrogate doth further order, adjudge and decree that the balance of said sum of $50,381.73 amounting to $47,881 73
the said executor, pursuant to the provisions of the said last will and testament, be
97 distributed as follows:

To George P. Wright	$6,840 24	
To Edward C. Wright	6,840 24	
" Mary H. Smith	6,840 25	
" Julia A. Amerman	6,840 25	
" Fanny S. Wright	6,840 25	
" Albert Wright	6,840 25	41,041 48
Leaving a balance of		$6,840 25

Which the said executor is hereby directed, if in his discretion he deems it for the best interest of the estate of said deceased, to pay the same unto the said Charles Wright, or invest the same and pay the interest or income derived therefrom to the said Charles Wright, pursuant to the provisions of the said last will and testament.

In witness whereof the said surrogate has hereunto set his hand and caused his official seal to be hereunto affixed the day and year first above written.

[SEAL.] ALEX'R HAGNER,
Surrogate.

(Endorsed:) Surrogate's court, Queens County. In the matter of the final accounting of the executor of Julius C. Wright, deceased. Decree & summary settlement.

STATE OF NEW YORK,
County of Queens, ss:

I, Alexander Hagner, surrogate of the said county of Queens, and sole judge of said court in and for said county, do hereby certify that I have compared the preceding with the original decree as the same is on record in my office in book of accounts of executors and administrators, liber 5, page 41, &c., April 23, 1875, and that the same is a correct transcript therefrom, and of the whole of such original.

98 I further certify that the above attestation is in due form and that the said surrogate's court has no clerk, and that the original papers are not permitted to be removed from my office.

Witness my hand and official seal of office this 18th day of March, 1879.

[SEAL.] ALEX'R HOGNER,
Surrogate.

(Endorsed:) Certified copy of decree. In real estate of Julius C. Wright.

(Endorsed:) 2055. Mary A. Smith, adm'r, &c. vs. Daniel M. Adams et al. Answer of Butterfields. Filed Dec. 14, 1878. A. S. Thomas, clerk.

And on this day, to wit, Dec. 21, 1878, the complainant, by her solicitors, filed in the clerk's office of said court her replication to answer of Butterfields, which said replication is in the words and figures following, to wit:

Replication to answer of Butterfields.

In the circuit court of the United States for the district of Kansas. In equity.

MARY A. SMITH, ADM'T'X,
v.
DANIEL M. ADAMS ET AL.

The replication of Mary A. Smith, administratrix of the estate of Julius A. Wright, to the joint and several answer of O. S. Butterfield and A. J. Butterfield, defendants.

This repliant, now and at all times hereafter saving and reserving to herself all and all manner of benefit advantage that may be had or taken, exception or otherwise, to the said answer for its manifold imperfections and insufficiencies, for replication thereto say' that she will aver, maintain and prove their said bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of
99 the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays *or* in and by said bill she has already prayed.

G. C. CLEMENS,
C. M. FOSTER,
Sol'rs for Compl't.

(Endorsed:) No. 2055. Mary A. Smith, adm'r, vs. Daniel M. Adams et al. Replication of Mary A. Smith, adm'r. Filed Dec. 21, 1878. A. S. Thomas, clerk.

And on this day, to wit, Wednesday, March 5, 1879, at November term, 1878, of said court, in the record of the proceedings thereof in said entitled suit is the following entry, to wit:

Journal entry.

MARY A. SMITH, ADMINISTRATRIX, &C.,
vs.
DANIEL M. ADAMS ET AL. } 2055.

This suit came on to be heard on bill, answer, replication, and proofs, and

was submitted, briefs to be filed in ten days from this day, papers and briefs to be sent to Judge Foster.

And on this day, to wit, April 21, 1879, the following decision was rendered in the above-entitled suit, which decision is in the words and figures following, to wit:

100 *Decision.*

U. S. C. C.

MARY A. SMITH, ADM'R'X DE BONIS NON, &C.,
vs.
DAN'L M. ADAMS, A. J. AND O. H. BUTTERfield, et al.

The def'ts, Butterfields, maintain that as this note was charged to Geo. P. Wright, executor, as cash in the inventory of assets in the surrogate's court, and a settlement made and distribution ordered, that therefore the executor is estopped from aver'ing that the debt is not paid and has no further power to administer on the matter.

In the first place I think the defendants misapprehend the scope of the probate record. This claim is listed and mentioned and appraised, not as cash but as a mortgage, together with a lot of other notes and mortgages.

It is true the executor is charged with it, as also with other choses in action. A settlement of the accounts of the executor was had, but the executor was not discharged; and it appears the trust had not been fully executed, but further duties were required of him under the will and order of the court. Undoubtedly further expenses were to be incurred & further settlement would be required.

It is true a distribution of the legacies had been ordered *ordered* to be made in cash, not in notes & mortgages. It does not appear that the order had been executed, or that this note & mortgage has passed to any of the legatees or to any other person.

These defendants are not parties to that record, or previous to it.

101 There is no principle of estopple available to them in that record. The most they could claim would be that the record showed a full administration under the will, a distribution of the legacies, and the termination of the powers of the executor. This would amount to a plea in abatement.

But, as I have before stated, the record does not show these facts or such facts as would abate the action.

Judgment must go for the plaintiff.

(Endorsed:) No. 2055. Smith, admin't'x, &c., vs. Adams, Butterfield, et al. Decision. Filed April 21, 1879. A. S. Thomas, clerk.

And on this day, to wit, Thursday, May 8, 1879, at November term, 1878, of said court, in the record of the proceeding thereof in said entitled suit, is the following entry, to wit:

Decree.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of Julius C. Wright, deceased, complainant,
vs.
DANIEL M. ADAMS, OLIVE A. ADAMS, HIS wife, Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, Isaac Rosser, John Freeman, The Citizens' Bank of Topeka, Kansas, Herman Markson and Jonathan Myers, assignees of the King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas, The Second National Bank of Leavenworth, Kansas, H. B. Cullum, receiver of the First National Bank of Topeka, Kansas, Albert G. Edwards, Leonard Mathews and Edward Whitaker, partners as Edward Mathews & Co., S. Brunswick and H. Brunswick, partners S. & H. Brunswick, The Valley National Bank of St. Louis, Missouri,
102 The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge and Rolling Mills, The Mastin Bank, Kansas City, Missouri, Moulton G. Farnham and Mathew K. Smith, partners as Smith & Farnham, J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield, defendants. } 2055.

Decree.

Former proceedings and orders.

This cause came on to be heard at this term, and it appearing to the court that the subpœna issued in this cause was duly served upon the defendants Daniel M. Adams, Olive A. Adams, Isaac Rosser, The Citizens' Bank of Topeka, Kansas, Herman Markson and Jonathan Myers, assignees in bankruptcy of The King Wrought Iron Bridge Manufactory and Iron Works of Iola, Kansas, The Second National Bank of Leavenworth, Kansas, H. B. Cullum, receiver of the First National Bank of Topeka, Kansas, and that notice has been published as ordered by the court requiring the defendants, J. S. Scott, and Moulton G. Farnham and Mathew K. Smith, as partners as Smith & Farnham, and The Valley National Bank of St. Louis, Missouri, and Zenas King to appear and answer the bill filed by the complainants; and it further appearing to the court that the time for appearance by the said defendants has long since expired and no appearance has been entered by them or any or either of them; and the said complainant, by her counsel, having before the commencement of the present term of this court duly entered an order in the order book of this court that said bill be taken pro confesso as against said above enumerated defendants; and it further appearing to the court that the said defendants, Albert G. Edwards,
103 Leonard Mathews and Edward Whittaker, partners, as Edwards, Mathews & Co; S. Brunswick and H. Brunswick, partners as S. & H. Brunswick; the Clerks' Savings Bank of St. Louis, Missouri; the Henbacker Forge and Rolling Mills, and the Mastin Bank of Kansas

City, Missouri, duly entered their appearance in this cause voluntarily, and that the time for them to plead, answer, or demur, has long since expired, and no plea, answer, or demur has been filed by them or either of them; and the said complainant, by her counsel, having, before the commencement of the present term of this court, entered an order in the order book of this court that said bill be taken pro confesso as against said defendants, and it appearing that neither of said orders taking said bill pro confesso as aforesaid has been vacated or set aside: thereupon, upon consideration of the premises, it was ordered, adjudged, and decreed that the bill of complaint in this cause be, and the same is hereby, taken as confessed by all the defendants aforenamed.

Decree pro confesso.

And this cause came on to be further heard at this term upon the bill, the pleas of the defendants Squire Bond, Frederick G. Hentig, John Freeman, and Alfred H. Hentig, the answer of Oscar H. Butterfield and Andrew J. Butterfield & exhibits attached, and the replication of said complainants to said plea of A. Hentig and answers of A. J. Butterfield and O. H. Butterfield, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the mistake and inaccuracy in the description of said mortgaged premises contained in said mortgage and complained of in said bill of complaint be corrected, and said mortgage is hereby declared to be and to have been of the following described premises, to wit: All that tract or parcel of land situate in the county of Shawnee, and State of Kansas, bounded and described as follows: Commencing at the northeast corner of reserve number two (2) of the Kansas half-breed lands, thence running west twenty-four and one-half (24½) chains, thence south to the Kansas River, thence east to the southeast corner of said reserve, thence to the place of beginning; excepting, however, seventy-two (72) acres of the north end thereof, said tract containing one hundred and twenty-eight (128) acres, and the description contained in said mortgage is corrected and reformed accordingly.

Decree on issues joined by the pleadings.

Mistake in description reformed and corrected.

104

And it is ordered, adjudged, and decreed that it be referred to Hiram Dillon, esquire, standing master of this court, to compute what is due to the complainant for principal and interest on the said mortgage in the bill of complaint mentioned and what is a reasonable solicitor's' fee as provided for in said mortgage, and for her costs of this cause such costs to be taxed; and upon the said defendants, Daniel M. Adams or Olive A. Adams, paying to said complainant what shall be reported due to her for principal, interest, solicitors' fees and costs as aforesaid, within three months after the said master shall have made his report, with accrued interest thereon at the rate of ten per centum per annum from the date of said report to the date of said payment, it is ordered that the said complainant do recover the said premises free and clear of all incumbrances, done by her or her said testator or his executors or administrators or any claiming by, from, or under her; but in default of the said Daniel M. Adams or Olive A. Adams paying to the complainant such principal, interest, solicitors' fees, cost, accrued interest, as aforesaid, by the time aforesaid, it is ordered, adjudged, and decreed that the said defendants do stand absolutely debarred and foreclosed of and from all equity of redemption of and in said mortgaged premises, and that the said mortgage premises as in this decree correctly described or a competent part thereof, be appraised, advertised, and sold in accordance with the mode of procedure

Reference for an account.

Time given to redeem.

105

No redemption premises to be sold by master.

State law to be pursued.

for the sale of real estate upon decree of foreclosure in the State courts of the State of Kansas, and the law of said State in that behalf, said sale to be made by the said Hiram P. Dillon, esquire, master, and reported to the court without unnecessary delay thereafter, and that the money to arise by such sale be applied in payment of what shall appear to be due to the complainant for principal, interest, solicitors' fees, costs, and accrued interest as aforesaid, by said master, immediately upon confirmation of the report of such sale; and it is ordered and decreed that the sum reported due for principal and interest shall bear interest at the rate of ten per cent. per annum from the date of said report until payment thereof; and wherever accrued interest is mentioned in this decree interest upon such sum exclusive of solicitors' fees and costs shall be intended.

Meaning of accrued interest.

Perpetual injunction. Title qu'ted in favor of complainant.

And it is further adjudged and decreed that none of the defendants to this cause save only the said Daniel M. Adams and Olive A. Adams have any right or title to or interest in or lien or claim upon said premises or any part thereof, either at law or in equity, and that they and each and of all of them, their
106 respective heirs and assigns, be perpetually enjoined not to set up or assert any title thereto or interest therein, or lien or claim thereon, against the said complainant, her heirs, assigns, or successors in trust or against any purchaser at any sale that may be made under this decree or his heirs or assigns.

Injunction against waste.

And it is further decreed that the said Isaac Rosser, Squire Bond, Alfred H. Hentig, and Frederick G. Hentig, their several and respective tenants, sub-tenants, agents, servants, attorneys, and assigns, since the commencement of this cause be perpetually enjoined from cutting, felling, and removing or either any timber standing, growing, or being on said premises.

Inquiries directed, referred to master to inquire and report.

It is further decreed that the said Hiram Dillon, esquire, master, report to the court some suitable person for receiver of said premises, and that the said master inquire and report to the court whether said premises are inadequte security for the sums that may be found due by him as aforesaid, and as to whether the said Daniel M. Adams is insolvent and generally as to whether a receiver should be appointed to collect in the rents and profits of said premises during the interim to elapse before any part of said sums can be satisfied, and what amount of bond said receiver should give, and a proper order for the appointment of said receiver if one shall be appointed.

And if it shall appear that said premises are inadequate security for said amounts, and that said Daniel M. Adams is insolvent, the court doth order—to be reported by said master shall be appointed re-
107,108 ceiver to collect in the rents and profits of said premises until the same are redeemed or sold and confirmed; and it is ordered that said master report on said account and inquiries hereby referred to him without delay.

Further directions reserved. Leave to apply.

And the court doth reserve the consideration of all further directions concerning the appointment of a receiver until the said master shall have made his report, and let the parties be at liberty to apply to the court or in chambers for the appointment of a receiver as they may be advised.

ll dismissed as to rge Hentig.

The said defendant, George Hentig, having deceased, and the cause not having been revived against his representatives, said bill as to him shall stand dismissed. And the said de-

fendant A. J. Butterfield and O. H. Butterfield give notice in open court of an appeal to the Supreme Court of the United States.

And said appeal is hereby allowed by the court & bond fixed at two hundred & fifty dollars, which is now in open court filed & approved.

C. G. FOSTER, *Judge.*

109 *Appeal bond.*

In the Supreme Court of the United States.

MARY A. SMITH, ADMINISTRATRIX DE BONIS non, with the will annexed, of Julius C. Wright, deceased, complainant,

vs.

DANIEL M. ADAMS, OLIVE A. ADAMS, Frederick G. Hentig, Alfred H. Hentig, Squire Bond, George Hentig, Isaac Rawser, John Freeman, The Citizens' Bank of Topeka; Herman Markson & Jonathan Myers, assignees in bankruptcy of the King Wrought Iron Bridge Manufactory & Iron Works of Iola, Kansas; The Second National Bank of Leavenworth; H. B. Cullum, receiver of the First National Bank of Topeka; Albert G. Edwards, Leonard Mathews & Edward Whitaker, partners under the style of Edwards, Mathews & Co.; S. Brunswick & H. Brunswick, partners under the style of S. & H. Brunswick; The Valley National Bank of St. Louis, Mo., The Clerks' Savings Bank, The Life Association of America, The Henbacker Forge & Rolling Mills of St. Louis, Mo.; Moulton G. Farnham & Mathew R. Smith, partners under the style of Smith & Farnham; J. S. Scott, Zenas King, Oscar H. Butterfield, and Andrew J. Butterfield, defendants.

Know all men by these presents that J. R. Mulvane and F. G. Hentig, of Topeka, Shawnee County, Kansas, is held and firmly bound unto Mary A. Smith, administratrix, &c., in the sum of two hundred & fifty dollars, to be paid to the said Mary A. Smith, administratrix, & her heirs, executors or assigns; to which payment, well and truly to be paid, bind myself & my heirs, executors & administrators, firmly by these presents, sealed with my seal & dated this 5th day of May, 1879.

Whereas the above named defendants, Oscar H. Butterfield and Andrew J. Butterfield, have taken an appeal to the Supreme Court
110 of the United States to reverse the decree rendered in the above entitled action by the circuit court of the United States for the district of Kansas:

Now, therefore, the conditions of this obligation is such that if the said named Oscar H. Butterfield & Andrew J. Butterfield shall prosecute their said appeal to effect & answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise remain in full force & virtue.

F. G. HENTIG. [SEAL.]
JOHN R. MULVANE. [SEAL.]

Bond approved June 3, 1879.

C. G. FOSTER, *Judge.*

(Endorsed:) No. 2055. Mary A. Smith, adm'x, &c., vs. Daniel M. Adams et al. Appeal bond. Filed June 6, 1879. A. S. Thomas, clerk, by J. N. Strickler, deputy.

111 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America, for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy of from the record of all the proceedings previous to and including the decree and of the appeal bond, in the suit of Mary A. Smith, administratrix de bonis non, with the will annexed, of Julius C. Wright, deceased, vs. Daniel M. Adams, Olive A. Adams, Oscar H. Butterfield, and Andrew J. Butterfield et al., No. 2055, in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 26th day of June, A. D. 1879.

[SEAL.] A. S. THOMAS, *Clerk.*

112 *Citation.*

By the honorable C. G. Foster, one of the judges of the circuit court of the United States for the district of Kansas, to Mary A. Smith, administratrix de bonis non, with the will annexed, of the estate of Julius C. Wright, deceased.

Whereas Oscar H. Butterfield & Andrew J. Butterfield have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Kansas, made in favor of you, the said Mary A. Smith, administratrix, &c., and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, D. C., on the second Monday in October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Leavenworth, in the district of Kansas, in the 8th circuit, this 3d day of June, A. D. 1879.

C. G. FOSTER, *Judge.*

We hereby accept service of this citation, and enter our appearance in the Supreme Court of the United States for the above-named appellee.

BENSON & PARKINSON,
Sol'rs of Record for Mary A. Smith, adm'x, &c., Appellee.

113 (Indorsed:) No. 2055. Citation. Filed June 6, 1879. A. S. Thomas, clerk, by J. N. Strickler, deputy.

114 *Appeal.*

ANDREW J. BUTTERFIELD AND OSCAR H. BUTterfield, appellants,
vs.
MARY S. SMITH, ADMINISTRATRIX DE BONIS non of the estate of Julius C. Wright, deceased, appellee.

To the honorable the Supreme Court of the United States:

The appeal of Andrew J. Butterfield and Oscar H. Butterfield, the

above-named defendants and appellants, respectfully show that upon the 26th day of October, 1877, the above-named Mary A. Smith, administratrix, &c., complainant and appellee, filed her bill in the circuit court of the United States for the district of Kansas against the above-named defendants and appellants and others, in which bill the complainant avers that on the 3rd day of October, A. D. 1872, Daniel M. Adams made his certain promissory note in writing and delivered it to Julius C. Wright, and thereby promised to pay to the said Julius C. Wright five thousand dollars seven years after date, with interest thereon at ten per cent. from date, payable semi-annually, principal to become due upon failure to pay interest when due. To secure the payment of said note Daniel M. Adams and Olive A. Adams, on the 3rd day of October, A. D. 1872, executed and delivered to the said Julius C. Wright their certain mortgage deed on one hundred and twenty acres of land in Shawnee County, Kansas. On the day of
115 , 1874, Julius C. Wright died, leaving a will by which he appointed George P. Wright his executor.

The will was admitted to record in the surrogate court in the county of Queens, State of New York, and letters testamentary were issued to him thereon, and he thereupon proceeded to the execution of said trust until, on the day of , 1877, he died, and afterwards the plaintiff was appointed administratrix de bonis non.

The bill prays judgment against Daniel M. Adams, and a decree of foreclosure, &c. The defendant Squire Bond filed a plea denying that the plaintiff was the owner of said note and mortgage. The defendants F. G. and A. H. Hentig filed a plea denying that plaintiff was the duly authorized administratrix de bonis non. The appellants, Andrew J. Butterfield and Oscar H. Butterfield, answered the bill, and for defence say: First, that they are the owners of the land in fee simple; second, that the mortgage and note in the bill mentioned is not the property of Julius C. Wright, deceased, but that the same is the property of the defendant Daniel M. Adams, and that the same was executed for the purpose of cheating and defrauding his creditors; third, that the note sued upon has been duly paid to George P. Wright, executor of Julius C. Wright, deceased, as appears by the inventory and final settlement with the surrogate court in and for the county of Queens, New York, copies of which are attached to the answer and made a part
116 thereof, marked Exhibits A and B. That on Thursday, May 8th, 1879, at November term, 1878, a final decree was made and pronounced in the cause, wherein it was in substance adjudged and decreed that the plaintiff recover of the said Daniel M. Adams the amount of his said note, with interest and costs, and upon failure to pay the same within months the land mentioned in the bill be sold to pay the same; and the court further adjudged and decreed that the appellants had no title or equity in the said land.

Wherefore these appellants appeal from the whole of said decree of said circuit court of the United States, and respectfully pray that the decree of the said circuit court, and the bill, answer, pleadings, exhibits, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said decree of the circuit court and every part thereof may be reversed, and a decree made dismissing said bill with costs, or such other decree as to the said Supreme Court shall seem just.

ALFRED ENNIS,
Solicitor for the Appellants.

117 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

ANDREW J. BUTTERFIELD AND OSCAR H. BUTterfield, appellants,
vs.
MARY A. SMITH, ADMINISTRATRIX DE BONIS non of the estate of Julius C. Wright, dec'd, appellee.

I hereby enter my appearance for the appellants in the above and foregoing entitled action this the 5th day of June, 1879.

ALFRED ENNIS,
Solicitor for Appellants.

(Indorsement on cover:) No. 784. Oscar H. Butterfield & Andrew J. Butterfield, appellants, vs. Mary A. Smith, adm'x de bonis non, &c., of Julius C. Wright, dec'd. Kansas C. C. U. S. Filed 11th July, 1879.

In the Supreme Court,

OF THE UNITED STATES.

OCTOBER TERM, 1879.

PHILADELPHIA BAR ASSOCIATION

ANDREW J. BUTTERFIELD AND
OSCAR H. BUTTERFIELD,
Appellants.
v. No. 784.
MARY A. SMITH, *Appellee.*
Adm'ix, *de bonis non.* of the Estate of
Julius C. Wright, deceased.

In the Supreme Court,

OF THE UNITED STATES.

OCTOBER TERM, 1879.

ANDREW J. BUTTERFIELD AND
OSCAR H. BUTTERFIELD,
v. *Appellants.* No. 784.
MARY A. SMITH, *Appellee,*
Adm'ix, *de bonis non.* of the Estate of
Julius C. Wright, deceased.

MOTION TO DISMISS.

The appellee moves the court to dismiss the appeal in this case on the ground that the court has no jurisdiction thereof.

G. C. CLEMENS,
Counsel for Appellee.

STATEMENT OF THE CASE.

On the 26th day of October, 1877, the appellee exhibited her bill in the Circuit Court of the United States, for the District of Kansas, against Daniel M. Adams

and numerous other defendants including the appellants, for the purpose of foreclosing a certain mortgage executed by the said Adams on real estate situate in the said District of Kansas.

To this bill, the appellants set up in their answer, as defenses, that they were the owners of the mortgaged premises in fee simple; that they were informed that the note and mortgage were not the property of the estate of Julius C. Wright, but that the same were the property of the defendant, Daniel M. Adams, and were executed and recorded by the said Adams for the purpose of cheating and defrauding his creditors, and particularly the appellants. As a second defense the appellants set up that the notes and mortgage described in the complainant's bill had been fully paid to George T. Wright, executor of the last will and testament of Julius C. Wright, deceased, as appeared by the inventory and final settlement of said estate. To this answer were attached copies of the proceedings of the Surrogate's Court of Queens County, New York, in the settlement of said estate including the inventory thereof.

To this answer the appellee filed the general replication.

On the hearing of said suit no evidence was introduced by the appellants except the exhibits to said answer.

On the eighth day of May, 1879 the Circuit Court rendered a decree for the complainant and referred the case to a master to report the amount due the complainant on the note and mortgage and what was a reasonable attorney's fee for foreclosing the same.

The court also found that the appellants had no interest in the mortgaged premises.

From this decree the appellants appeal to this court. The appellee now moves to dismiss the same.

ARGUMENT.

The decree is not final.

The rule laid down in the case of *Forgay v. Conrad*, 6 *How.* 204, requires that the decree shall entirely dispose of the case, and shall give the complainant the right to have the decree carried into immediate execution. In this case the amount due the complainant on the note described in her bill together with the attorney's fee claimed for foreclosure must be found by the master and his report, confirmed by the court before the mort gaged premises can be sold.

Before an appeal can be taken to this court, the whole case must be disposed of in the Circuit Court. The decree in this case is interlocutory and it is no hardship on the appellants, to compel them to wait the confirmation of the master's report They may then have no ground to appeal. The court or the complainant may dismiss the bill before that time. Besides the appellant may be dissatisfied with the final decree in the case and desire to appeal from that also. The amount found due by the court may then show that this court has no jurisdiction.

The Palmyra, 10 Wheat. 502.
Beebe, *et al. v.*, Russell, 19 *How.* 283.
Railroad Company, *v.* Swasey 23 Wall. 405.

The amount in dispute does not exceed five thousand dollars.

Before this court can have jurisdiction it must affirmatively appear that the amount in dispute exceeds the sum of five thousand dollars. If the jurisdiction of the court depends on the amount of the debt, then it is determin-

ed by the amount that the appellee shall recover.

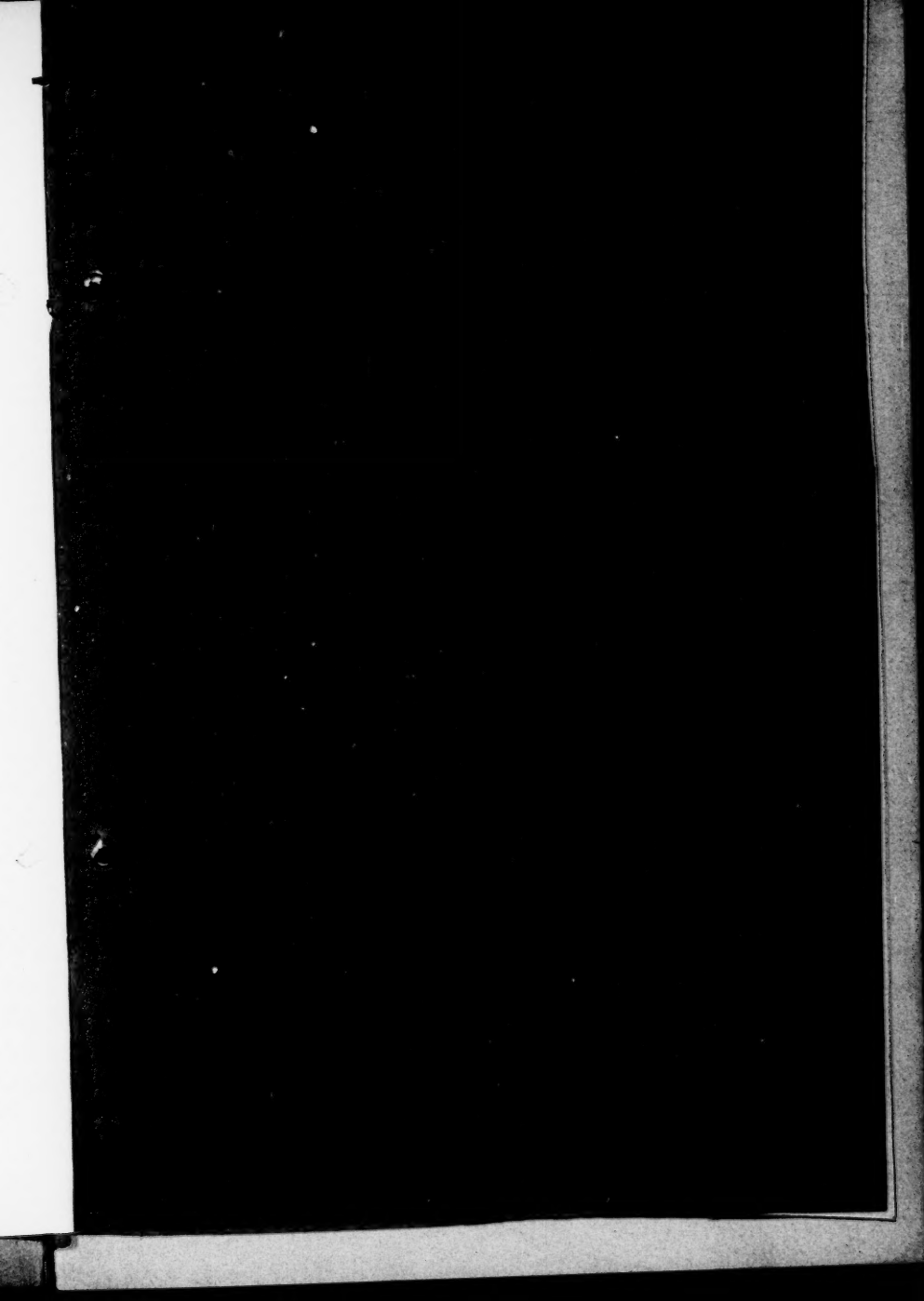
Ross *v.* Prentiss, 3 How. 771.

Merrill *v.* Petty, 16 Wall. 344.

But at the time of the appeal that was undetermined.

If the jurisdiction of this court depends on the value of the land, then there is nothing in the record to show that its value exceeds the sum of five thousand dollars.

C. M. FOSTER,
G. C. CLEMENS,
Counsel for Appellee.



In the Supreme Court of the United States.

ANDREW J. BUTTERFIELD, and OSCAR H. BUTTERFIELD,

vs. *Appellants,*

MARY A. SMITH, Administratrix de bonis non, of the Estate of Julus C. Wright, deceased,

Appellee.

No. 784.

Brief of Appellants on Motion to Dismiss Appeal.

In the Supreme Court of the United States.

ANDREW J. BUTTERFIELD, and OSCAR H. BUTTERFIELD,

vs. *Appellants,*

MARY A. SMITH, Administratrix de bonis non, of the Estate of Julus C. Wright, deceased,

Appellee.

No. 784.

Brief of Appellants on Motion to Dismiss Appeal.

This suit was instituted to foreclose a mortgage executed by Daniel M. Adams and wife, on the 3d day of October, 1872, to Julius C. Wright, for the sum of $5,000. The mortgage provides, that upon the failure to pay interest when the same became due, the whole amount, principal and interest, shall become due, and the amount claimed by the bill is $5,000 with interest on the same from the 3d day of April, 1873, at the rate of ten per cent., and interest at seven per cent. on each of the semi-annual instalments of interest, and an Attorney's fee of $500. The appellants, with others, were made parties defendants to the bill, as having an interest in the mortgaged premises, and were required to answer under oath as to their interest. They appeared and answered that they were the *owners* in *fee* of the land described in the bill, and that they had been informed and be-

lieved that the note and mortgage sued upon is not the property of the estate of Julius C. Wright, deceased, but the property of the defendant, Daniel M. Adams, and was executed by the said Daniel M. Adams for the purpose of cheating and defrauding his creditors.

And for a second defence, the appellants set up that the note upon which the action had been brought, had been fully paid to George P. Wright, Executor of the last will and testament of Julius C. Wright, deceased, as appears by the inventory and his final settlement, copies of which are attached to the answer and made a part thereof. The defendant, Daniel M. Adams, failed to appear and answer. and a decree was taken against him *pro confesso.*

The case came on to be heard upon the 8th day of May, 1879, upon the Bill, the answer of the appellants and exhibits filed therewith, and the Court entered a decree that the land should be sold to pay the debt in the bill mentioned, and further decreed that the appellants, and none of the other defendants, except Daniel M. Adams and wife, had any right, title or interest in, or lien or claim upon said premises, or any part thereof, either in law or in equity, and that they, and each of, and all of them, their representatives, heirs and assigns, be perpetually enjoined not to set up or assert any title thereto, or interest therein, or lien or claim thereon. The appellee contends that this is not a final decree. If it is not final as to the appellants it is not the fault of the Attorney who drafted the decree, for it is very evident he never intended we should have a shadow of a chance in that Court, and that his ideas did not extend beyond, is perfectly apparent. It was intended to be final and we think it is As to the appellants it settles the whole case. The Court decides that they have no interest in the land, or the surplus after the mortgage is paid off, *notwithstanding they are the owners in fee of the land.*

A final decree is where the whole merits of the case is decided, and nothing reserved for the future judgment of the Court.

Thomson *vs.* Dean, 7 Wallace, 342 and 345; French *vs.* Shoemaker, 12 Wallace, 99.

The second point made by the appellee, is, that the amount in dispute does not exceed five thousand dollars, and cites Ross *vs.* Prentiss, 3 Howard, 771, and Merrill *vs.* Petty, 16 Wallace, 34. In the first case, the matter in dispute was only $600, and in the second was for unliquidated damages.

In the case of Lee *vs.* Watson, 1 Wallace, 33, the Court says: "In an action upon a money demand where the general issue is pleaded, the matter in dispute is the debt claimed, and its amount as stated in the body of the declaration." "By matter in dispute is meant the subject of litigation." This case is confirmed in 3d Otto, in the case of Schacker *vs.* Hartford Fire Insurance Co., page 241.

The allegation in the bill in this case is as follows: "And your orator further shows and avers that there is now due from the said Daniel M. Adams to your orator, the said sum of five thousand dollars, with interest thereon since the third day of April, 1873, at the rate of ten per cent. per annum, payable semi-annually, together with interest at seven per cent. per annum on each of said semi-annual installments of interest from the time they respectively fell due and the further sum of five hundred dollars solicitor's fee for the foreclosure of said mortgage.

Upon the entering of the decree, the cause was referred to the Master to compute the interest, and report what was due of principal and interest, and what was a reasonable Attorney's fee. A matter which under the decree entered, the appellants had no interest whatever, and as the decree had been taken pro confesso as to Daniel M. Adams, we cannot see upon what hypothesis the Master could report a less sum than that demanded by the bill.

At the date of the decree, the amount of the debt, interest and $500 Attorney's fee, was $9,146.50, which is the subject matter in dispute between the parties to this appeal.

ALFRED ENNIS,
Attorney for Appellant.

In the Supreme Court of the United States.

ANDREW J. BUTTERFIELD, and OSCAR H. BUTTERFIELD,

vs. *Appellants,*

MARY A. SMITH, Administratrix de bonis non, of the Estate of Julius C. Wright, deceased,

Appellee.

No. 784.

Brief of Counsel for Appellants.

In the Supreme Court of the United States.

ANDREW J. BUTTERFIELD, and OSCAR H. BUTTERFIELD,

vs. *Appellants,*

MARY A. SMITH, Administratrix de bonis non, of the Estate of Julius C. Wright, deceased,

Appellee.

No. 784.

Brief of Counsel for Appellants.

This is a suit to foreclose a mortgage executed by Daniel M. Adams and wife, on the third day of October, A. D. 1872, to Julius C. Wright for the sum of $5,000. The mortgage provides that upon the failure to pay interest, the whole amount, principal and interest shall become due; that the first failure to pay interest was on the third day of October, 1873, and that no interest has been paid since that time.

Julius C. Wright, the mortgagee named in the mortgage, departed this life on the day of A. D., 1874, leaving a will by which he appointed George P. Wright his executor, and on the 4th day of March, 1874, the will was admitted to probate in the Surrogate Court for the County of Queens, State of New York, and letters testamentary were issued to the said George P. Wright, who thereupon duly qualified and proceeded in the execution of his trust until the day of 1877, when he departed this life.

On the 9th day of June, 1874, the said executor, George P. Wright, filed an inventory of the personal property of Julius C. Wright, deceased, in which inventory is included the note against Daniel M. Adams for $5,000, which is the subject matter of this controversy. See Exhibit "A," filed with appellant's answer, page 53, of printed record. On the 8th day of March, 1875, the said executor, George P. Wright, made application to the Surrogate Court aforesaid for a *final settlement* of his accounts as such executor, and the Surrogate Court issued a citation to all persons interested in the estate of the deceased to attend such final settlement, and on the 23d day of April, 1875, George P. Wright made his final settlement in which the Surrogate Court charges him with the whole amount of his inventory of the 19th day of June, 1874, as cash, and directs how the same shall be distributed. See Exhibit "B," filed with appellant's answer pages 54 and 55 of printed record.

The defendant, Squire Bond, filed a plea denying that the complainant was the owner of said note and mortgage. The defendants, F. G. Hentig and A. H. Hentig, filed a plea denying that the complainant was the duly authorized administratix *de-bonis non*. The appellants, Andrew J. Butterfield and Oscar H. Butterfield, answered the bill, and for defense say *first*, that they are the owners of the land in *fee simple; second*, that the mortgage and note in the bill mentioned is not the property of Julius C. Wright, deceased, but that the same is the property of the defendant, Daniel M. Adams, and that the same was executed for the purpose of cheating and defrauding his creditors; *third*, that the note sued upon has been duly paid to George P. Wright, executor of Julius C. Wright, deceased, as appears by the inventory and final settlement with the Surrogate Court in and for the County of Queens, New York, copies of which are attached to the answer and made a part thereof, marked Exhibits A and B.

On the 8th day of May, 1879, a final decree was entered for the complainant for the amount of the note and the land ordered to be sold to pay the same, and the Court further decreed that the appellants had no title or interest in the said land. (See decree at page 60 of printed record.)

The court erred:

FIRST.—In finding for the plaintiff. The Court should have dismissed the bill.

SECOND.—The Court erred in decreeing that appellants had no interest in the land.

This cause was submitted on bill, answer, replication, and proofs. See pages 56 and 57 of printed record.

There was no evidence offered by the complainant except the *copy* of note and mortgage filed with the bill. The original note and mortgage was never produced in evidence. The answer of the appellants is sworn to and is evidence upon every point responsive to the bill. In addition to their sworn answer, they file the inventory and *final settlement* of George P. Wright, executor of the last will and testament of Julius C. Wright, deceased, the mortgagee, as exhibits. The answer and exhibits are found on pages 51 to 55 inclusive of the printed record. These exhibits show that the executor, George P. Wright, had fully administered upon the five thousand dollar mortgage in controversy.

In his final settlement he is charged with his inventory..... $57,203 31
Increase (which was interest)..... 3,535 00

$60,738 31

Then he is credited with funeral expenses and debts of deceased..... $8,855 70
Amount of interest paid to Miss Mary Wright..... 195 00
Amount of note incorrectly inventoried 500 00 9,550 70

51,187 61

Executor's commissions	782 38
Leaving a balance	50,405 23
Then he is credited with the costs and expenses of accounting and serving citations	23 50
	$50,381 73

Leaving in his hands for distribution in *cash*, (not mortgages) $50,381.73. Out of this the Court orders him to invest the sum of $2,500 in good and approved bond and mortgages or in bonds of the United States or State of New York, and out of the income to pay Mary Wright the sum of $150.00 per year, etc., and that the residue of said sum, amounting to 47,881.73, he pay as follows :

To George P. Wright	$6,840 24
Edward C. Wright	6,840 24
Mary A. Smith	6,840 25
Julia A. Amerman	6,840 25
Fanny S. Wright	6,840 25
Albert Wright	6,840 25
	$41,041 48

Leaving a balance in his hands of $6,840.25, which the Executor is directed to invest for Charles Wright or pay the money pursuant to the will.

Final settlements of executors and administrators have the force and effect of a judgment.

The above mentioned settlement was a judgment in favor of each of the distributees against the executor, George P. Wright, and when the said executor died the only thing for the administratrix *de bonis non* to do was to see that the money was properly distributed pursuant to the order of the Court, and if the money was not forthcoming the distributees had their remedy upon the bond of the executor, George P. Wright, or his estate. She can-

not go back of the final settlement of the 23d day of April, 1875. All prior to that time had been fully administered.

See 53 Barb. page 217, W. Brown *vs.* C. Brown, *et al.*

" 54 Barb. 382, Campbell *vs.* Thacher.

" 12 Mo., 182, the State *vs.* Stephenson.

" 35 Mo., 29, 41, and 43, Picot *vs.* Biddle.

" 62 Mo., 461, Williams, Admr, *vs.* Petticrew.

" 4th Otto, 746, 751, Pate *vs.* Norton.

" 17 Kansas, 47, Musick *vs.* J. Beebe, Administrator.

" 62 Mo., 417, Sheets *et al. vs.* Kirtley.

" 23 Miss., 196, Singleton *vs.* Garrett.

" 44 Miss., 81, Lambeth *vs.* Elder.

This last case is directly in point, and *all* of the above authorities show that a final settlement has the force and effect of a judgment. Let us apply it to this case.

The complainant introduces no proof.

The appellants introduce in support of their answer the final settlement of the executor and his inventory, showing that he had the mortgage, and that in his final settlement he permits judgment to go against him for the whole amount of the inventory, less credits therein allowed, and included in that judgment is the mortgage now in suit. If the distributies have a judgment against George P. Wright for their money, what right have *they* to pursue the appellants and seek to take from them their lands? None whatever.

In the absence of any proof on the part of the complainant, is not the court bound to presume that the mortgage has been settled? We aver in our answer that the note and mortgage has been duly paid to the executor, George P. Wright, and introduce evidence to show the fact. If it is not true, and the mortgage has not been paid, it would have been easy for the complainants to have taken the testimony of Daniel M. Adams, who at the time lived in Topeka, Kansas, to show it, but for

some reason they did not do it, and preferred submitting the case without any evidence, not even the note and mortgage. It is evidently an attempt on the part of the complainants to deprive the appellants of their lands unjustly.

The appellants, A. J. and O. H. Butterfield, held what appeared from the records to be a second mortgage, and on the 29th day of August, 1874, brought suit to foreclose in the District court of Shawnee county, Kansas, and the suit was removed to the U. S. Circuit Court for the District of Kansas, by the defendant, Adams, where he made every defence possible, and delayed the suit so that appellants did not get into possession of the premises until March, 1877. The executor, George P. Wright, had full knowledge of this suit, and they allege in complainant's bill that no interest had been paid upon the note and mortgage since April, 1873. It was his duty to foreclose if the interest was not paid, yet he stands by and permits us to foreclose our mortgage and take possession, and the question naturally arises, " Why did he do so?" The question is fully answered when we look at his final settlement of April 23, 1875. The mortgage had been paid.

George P. Wright, the executor, died in 1877. He lived two years after making his final settlement, and permitted us to foreclose and take possession, and all this time he was receiving no interest, and making no effort whatever to collect the money, and this, too, with a judgment standing against him for the amount, and an order of the court that he pay the same to the several distributees. There is but one conclusion to come to from the circumstances in this case, and that is that the administratrix has long since received her distributive share of the estate, as have all the other distributees, and this suit is brought without a shadow of justice or legal right to recover. In the case of Charles E. Musick *et al.* vs. Jerome Beebe, adm'r, 17th Kansas, page 47, the court say: " While all settlements of estates by administrators are in a certain sense Judicial determin-

ations, yet there is a broad distinction between annual and final settlements. The one is wholly *ex parte*, and without notice; the other can only be made upon due publication of notice to creditors and all persons interested. The one is only *prima facie* correct, and subject to corrections of errors or mistakes thereafter discovered in it, with appeal, or any direct proceedings to review or set it aside. The other is conclusive and final, unless set aside by appeal or direct proceedings therefor, or impeached for fraud. The one is, so to speak, a judgment *de bene esse*, the other a *final judgment*."

In the case of Frank Sheets and Flora Sheets *vs.* Asa F. Kirtley, 62 Mo., page 417, the court say, "Final judgments of the probate court stand on a footing of equality with final judgments of the *circuit court*, with reference to annulling them for fraud, and final settlements as administrators, guardians and curators, have the force and effect of judgments, and can only be set aside in equity when they have been fraudulently procured."

In the case of John P. Williams, administrator, etc., *et al. vs.* the Heirs of William Petticrew, 62 Mo., page 461, the court say, "Final settlements of administrators, curators, etc., must be seasonably and directly assailed, in order to avoid the effect as judgments importing absolute verity. In a suit on the final settlement of A's estate, items allowed in th final settlement of the estate of B, father of A, by the same executor, cannot be assailed, not being a matter before the court." In the case of Brown *vs.* Brown, 53 Barb., 220, Judge Johnson, in delivering his opinion, says, "The appeal is from the decree of the Surrogate upon a final accounting by the defendant; and one of the principal questions in the case is whether the accounting in question was properly made upon the basis of a former final accounting in 1861, or whether it should not have gone back to the commencement of the defendant's trust, as executor, and embraced the whole subject of assets, charges and credits. I am clearly of the opin-

ion that the settlement of 1861 was the proper basis of this settlement, and that it was not necessary for the defendant to go behind it for any purpose, by reason of anything which appears in the case upon the appeal. That was a final settlement by the very terms of the decree, and the proceedings were instituted for the purpose of having it final. Citations were issued to all the parties interested, and the same parties who appear here, there appeared by counsel, and were heard before the Surrogate in respect to all matters embraced in such accounting. A final decree was made thereupon by the Surrogate, which the appellants did not appeal from, but suffered to remain as such *final decree.*"

In the case of W. F. and Susan Lambeth *vs.* W. H. Elder, administrator, 44 Miss., page 81, the court say, "When an administrator, upon the suggestion that it would be for the benefit of those interested, obtains an order of the probate court to sell the land of his intestate, and sells the same upon credit, taking the notes or bonds of the purchaser for the several amounts, and afterwards files these notes or bonds with his final account, charging himself with the amounts as if collected, and said final settlement is confirmed by order of the probate court, and he is finally discharged from said administration, *the land is discharged of the lien,* and he estopped by the probate records to pay the notes which have not been paid. The decree of the probate court, so long as it remains unreversed, is conclusive upon him, and all others who were parties to it, as to all matters and facts brought within its scope and upon which it was predicated."

"When the notes given for the land are included in the final account by the administrator, as a debit against himself, it is *conclusive against him* that the amount *had been received by him* in favor of the heirs, and it is also conclusive against them (for they were parties to the settlement) in favor of any sub-vendee of the land."

These authorities clearly show that by the final settlement made by the executor, George P. Wright, that the amount of the note for which the complainant is now seeking to sell the land, now in the possession of and owned by the defendants, A. J. and O. H. Butterfield, was included in his final settlement as cash in his hands to be distributed among the several distributees, and that the same has been fully administered upon, and the complainant as administratrix *de bonis non*, has no rights in this court. If the heirs of Julius C. Wright have not received their money, they must look to the estate of George P. Wright for it, as by the final settlement made by said George P. Wright, the *mortgage lien* has been released *and is final.*

In the case of Singleton *vs.* Garrett *et al.*, 23 Miss. Rep., page 196, the facts were that Garrett, administrator of one Singleton, had sold real estate to the amount of $22,000, on the suggestion that it would be for the interest of the heirs so to do, his final settlement showed a balance of $17,650 for distribution, suit was brought on his general administration bond by Francis Singleton, one of the distributees, alleging a failure of the administrator to pay over to him his aliquot part of the fund. The defence made was that Garrett had included in his final account the proceeds of the land sale, which was larger than the balance decreed to be distributed, and therefore he and his sureties especially were not liable on this bond, and it was held that the defence could not be made, because of the conclusiveness of the probate decree. The court say, "The administrator by his own act has precluded himself from the enquiry whether he did or did not receive the assets. *By solemn judgment it appears that he did,* "and he cannot gainsay it." Certainly if any point is placed beyond cavil, it is that the final decree of a probate court on final settlement, when regularly made after notice, is conclusive, at least on the administrator."

In the case of Singleton *vs.* Garrett *et al.*, quoted on same

page, the court say, "The final settlement shows a balance for distribution." In any suit brought by the distributees to recover this balance, the administrator would be estopped to say that in fact and truth the purchase for the land had not been realized by him, and that therefore that sum must be deducted from the distribution fund. He has reported it as collected, the court has adjudicated upon it as an element in his account, and its decree, so long as it continues unreversed, is conclusive upon him and all others who were parties to it, as to all other matters and facts brought within its scope, and upon which it was predicated.

We will now consider the second error assigned. Counsel for the complainants argued in the court below that because we had not filed our deed we had failed to prove we had any interest in the land, and therefore we had no right to interfere with the mortgage. We do not think it makes any difference whether we have proved our interest in the land or not. We have been made parties defendants, and if we show to the court that there is no equity in complainant's bill, it must be dismissed without any regard to what our interest may be. An *amicus curiæ* may suggest to the court that there is no equity in the bill. Courts of equity will do equity, and will not scrutinize the source from which the light comes that enables them to do so. We answer that we are the owners in fee, and the answer is sworn to. This is responsive to the bill, and the answer is evidence for the defendants, Butterfields, and the complainant must overcome it by the counter evidence of two witnesses, or by one witness and strong circumstances in corroboration, otherwise it will prevail.

See Story's Equity Pleadings, § 849 and § 875.

Greenleaf on Evidence, § 284.

10. John., 540, 541 and 542, Closon *vs.* Morris.

4. Otto, 580, Seitz *vs.* Mitchell.

Story in his Equity Jurisprudence sec. 1528 says:

"In Courts of equity the parties, plaintiffs as well as defend-

ants may reciprocally require and use the testimony of each other upon a bill and cross bill for the purpose. And in every case the answer of the defendant to a bill and responsive to it is evidence in his own favor. Nay, the doctrine of equity goes further, for not only is such an answer proof in favor of the defendant, but as to matters of fact, of which the bill seeks a disclosure from him it is conclusive in his favor unless it is overcome by the satisfactory testimony of two opposing witnesses, or of one witness corroborated by other circumstances and facts which give it greater weight than the answer, or which are equivalent in weight to a second witness." This is the rule. The complainants made us defendants, and alleged that we claimed some interest in the land, and asked us to disclose what our interest was, "according to the rules and practice of this court," which is under oath. This is responsive to the bill, and as the complainants introduced no proof, the fact must be conceded that the appellants, Butterfields, are the owners in fee of the land, and the Court erred in decreeing that they had no interest.

ALFRED ENNIS
and
HENTIG & SPERRY,
Solicitors for Appellants.

In the Supreme Court of the United States.

ANDREW J. BUTTERFIELD, and OSCAR H. BUTTERFIELD,

vs. *Appellants,*

MARY A. SMITH, Administratrix de bonis non, of the Estate of Julius C. Wright, deceased,

Appellee.

No. 784.

Appeal from the Circuit Court of the United States for the District of Kansas.

Reply.

ALFRED ENNIS,

AND

HENTIG & SPERRY,

Counsel for Appellants.

In the Supreme Court of United States.

ANDREW J. BUTTERFIELD, and OSCAR H. BUTTERFIELD,
vs. *Appellants,*
MARY A. SMITH, Administratrix de bonis non, of the Estate of Julius C. Wright, deceased,
Appellee.
No. 784.

Appeal from the Circuit Court of the United States for the District of Kansas.

Reply.

Counsel for appellee on the third page of their brief say: "As we understand the law a party must either show that a debt "has been paid in fact, or he must show that the party seeking "payment has done some act by which he is estopped from de- "nying that payments have been made."

Payment may be proven by circumstances as well as by positive proof See Greenleaf on Evidence, 2d Vol. § 527. The proceedings before the Surrogate Court by the Executor, George P. Wright, was in the nature of a suit, wherein the executor was plaintiff, and the legatees and creditors were defendants, and the matter before the Court was: Is the report of the executor which he desires shall be made final, correct? And upon the hearing, the Court finds that it *is* correct, and so enters of record. That record shows that he had in his hands for distribution the sum of $50,381.73 which sum is composed in part of the proceeds of the note and mortgage sued upon by the administratrix *de bonis*

non. This is a judgment against George P. Wright in favor of each of the legatees for the amount due to each of them. Are they entitled to a judgment against the executors, and also against each of the debtors of Julius C. Wright? The complainant, Mary A. Smith, is administratrix *de bonis non.* She commences where the former executor, George P. Wright, left off. What was administered upon by him, she has nothing whatever to do with. George P. Wright has reported so much money collected, and the Court has ordered it distributed. The administratrix is attempting to go back of this settlement and collect from appellants this note and mortgage.

Counsel for appellee on page 4 of their brief cite from the Statutes of New York as follows: "The effect of a final settle-"ment shall be deemed conclusive evidence against all creditors, "legatees, next of kin of the deceased, and all other persons in "any way interested in the estate, upon whom the citation shall "have been served, either personally or by publication, of the "following facts :

* * * * * * *

3d. "That the money stated in such account as collected "were all that were collectable on the debts stated in such ac-"count at the time of the settlement thereof."

* * * * * * *

We cannot see that there is anything in this that would permit an executor to come in and deny that he had not collected what he has reported he has.

But this evidence in the case now before the Court, is introduced in proof of the allegation that the note and mortgage has been paid. If we have made a *prima facie* case we need go no further. The complainant has introduced *no* proof, but submits her case, with our evidence on file with our answer. She could not have been taken by surprise, and the only rational view of the case is that the debt is *paid* or they would have shown to the contrary. Counsel at the bottom of page 3 and top of page 4 of

their brief say: "If the executor prefers to treat uncollected "notes as cash, either for his own convenience, or because he can "pay them over to the heirs as cash, this is a question which "concerns him alone, and the decree does not discharge the debt- "ors of the estate of his just debts." There is *no proof* in the case that such was the fact, and this is the first we have ever heard of it. But suppose the executor takes them as his individual property, and assumes the payment of the distributees. In that event the mortgage in question would belong to the estate of George P. Wright, the former executor, and not to the estate of Julius C. Wright, and the complainant Mary A. Smith as administratrix of Julius C. Wright, deceased, cannot maintain this suit. But as this question does not arise in the case, it need not be further considered. Counsel argue this case as if that point was before the Court, and talk about the principles of estoppel. If George P. Wright was suing on this note as his individual property, the argument of counsel might have some force, but such is not the case. Counsel cite Patterson vs. Hull, 9th Cowen, p 762, and say: It is a question very similar. In that case the only question was the application of payments. A party held notes secured by mortgage, and he charged them on his book to the mortgagor with whom he had other dealings. considerable money was paid him by the mortgagor without any direction where it should be applied, and the payments as made were placed to his credit on the account. The mortgagor died, and other creditors who had a mortgage on the same property, contended that the notes were paid; and the Court held that as neither party had made any application of the payments when made, the Court would apply them where they would be most beneficial to the debtor, and decreed that the notes had been paid. We are unable to see how this case throws any light upon the question now before the Court.

At the bottom of page 6 counsel for appellee say: "If it be contended that this is an admission on the part of the execu-

tor of the estate that the debt has been paid, the answer is, that the executor at that time is not the complainant in this case, and that the admissions of one do not bind the other. They refer the Court upon this point to the case of Pease vs. Phelps, 10th Conn. page 62. The opinion of the court they rely on is on page 68 and is as follows: "The question submitted by the "pleadings to the jury was whether the note in suit has been "exhibited by plaintiff to Ursula Stebbins one of the executors "within twelve months after plaintiff arrived at the age of "twenty-one years," and to show that it had been so exhibited "the plaintiff offered witnesses to prove that the said Ursula "Stebbins while executrix had acknowledged that fact. This "testimony was rejected by the Judge; and in my opinion it was "properly rejected. The present action is prosecuted against the "defendant as administratix *de bonis non* of Samuel Stebbins, "the said Ursula having died, and her co-executor removed "from office, there is no privity between this administrator and "those executors. Executors are agents or trustees only, whose "duty it is to administer according to the will of the testator, "and according to law, and not subject the estate by their admis-"sions."

The above authority is quoted as an analagous case to the one now before the court. The one is a solemn judgment of the Surrogate Court, having jurisdiction of the subject matter after the parties have been duly brought before the court, including the appellee in this suit. The other is an attempt to prove a verbal admission of an executrix after her death. The one is proper evidence under all circumstances, and the other would not be admissible under any. If this authority does not sustain the proposition of counsel, it must be taken then as an admission on their part that the record introduced by the appellants is an admission on the part of the executor George P. Wright, that he has received the money and that the mortgage for which the appellee brought this suit has been fully satisfied.

In what manner might we ask, does the administratrix *de bonis non* obtain information in regard to what goods are administered? We answer, From the records of the Surrogate Court. How do any persons interested ascertain the condition of an estate? We answer, By the records of the Surrogate Court. If upon an examination of the records of the Surrogate Court a party finds that the executor in his final settlement has reported debts as collected, and parties acting under information thus obtained, are they to be prejudiced thereby, merely because the executrix *de bonis non* chooses to do so. This is the position occupied by the appellee, she makes no attempt to even justify her conduct. She proposes to take our land, notwithstanding the facts spread upon the record of the Surrogate Court, and asks this Court to say that all the solemn proceedings had in that court mean nothing—is binding upon no one, and that she can go back where George P. Wright started and readminister the estate. This is progressing lobster fashion. If this is the rule, then the time when an estate will be finally settled must depend upon whether the executor shall live long enough to complete the work. Should he die, then the work must be done *de novo*, and so *ad infinitum*.

ALFRED ENNIS,

AND

HENTIG & SPERRY,

Counsel for Appellants.

In the Supreme Court of the United States.

October Term, 1879.

ANDREW J. BUTTERFIELD, and OSCAR H. BUTTERFIELD,

vs. *Appellants,*

MARY A. SMITH, Administratrix de bonis non, of the Estate of Julius C. Wright, deceased,

Appellee.

No. 784.

Appeal from the Circuit Court of the United States for the District of Kansas.

C. M. FOSTER,
G. C. CLEMENS,
Counsel for Appellee.

In the Supreme Court of United States.

October Term, 1879.

ANDREW J. BUTTERFIELD, and OSCAR H. BUTTERFIELD,
vs. *Appellants,*
MARY A. SMITH, Administratrix de bonis non, of the Estate of Julius C. Wright, deceased,
Appellee.
No. 784.

Appeal from the Circuit Court of the United States for the District of Kansas.

ARGUMENT FOR APPELLEE.

The appellee brought her bill to foreclose a certain mortgage executed by Daniel M. Adams and wife, two of the defendants. No appearance was entered by them to the bill, and the same was taken against them as confessed.

The appellants, on the 11th day of December, 1878, filed an answer in which they set up that they were the owners in fee simple of the mortgaged premises, and that "they have been informed that the note and mortgage sued on in this action by the "complainant is not the property of the said estate of Julius C. "Wright, deceased, but that the same is the property of the defendant, Daniel M. Adams, and was executed and recorded by "the said Daniel M. Adams for the purpose of cheating and de-

" frauding his creditors and particularly these defendants, and " these defendants believe said information to be true.

" And for a second and further defense these defendants say " that the note sued upon in this action has been duly paid to " George P. Wright, executor of the last will and testament of " Julius C. Wright, deceased, as appears by the inventory and his " final settlement, copies of which are hereto attached, marked " Exhibits A and B."

On the final hearing of the case no proof was offered by the appellants to sustain the above answer, except the exhibits thereto attached. The court held that the appellants had not proved that the complainant's mortgage had been paid, and rendered a decree in her favor, and directed that it be referred to a master to compute what was due the complainant on the note and mortgage. Before the coming in of the master's report this appeal was taken.

We have set out at length the substantial part of the answer of the appellants, in order that we might call to the attention of the court the defenses as therein set forth. It will be noticed that the appellants, in their argument, claim to have three defenses while their answer insists on but two. Neither of these defenses is good. The legal effect of the first defense is that the appellants were, at the time of filing the answer, the owners of the mortgaged premises, and that the mortgage of complainant was not the property of the complainant but was simply a colorable mortgage executed and recorded to defraud the creditors of Adams, and particularly the appellants.

It will be observed that this answer does not set forth how nor in what manner this mortgage was to operate as a fraud on the appellants or the creditors of Adams, and is therefore not a good plea of fraud in form. It is not good in substance as it does not set forth that the defendants are in a condition to attack the mortgage for fraud, as they do not allege that they are creditors

of Adams, nor do they allege in what manner they acquired title to the property. The last defense is bad for the reason that the plea of payment is not a positive averment of payment but simply a statement that it appears, by a certain record, to be paid. As we understand the law, a party must either show that a debt has been paid in fact, or he must show that the party seeking payment has done some act by which he is estopped from denying that payments have been made. It is not enough to say that certain things look as if payment had been made. Besides, these defenses are contradictory and overrule each other.

The only proof of payment offered by the appellants, is the record of the Surrogate's Court of Queens County, New York. That record shows that a note and mortgage answering the description of the note and mortgage in suit, appear in the inventory of the estate of Julius C. Wright, deceased, and do not appear in the settlement of the account of the executor. A division of the estate is ordered by the Surrogate, and this, counsel claim, is an adjudication binding on all the world, that the note in controversy has been paid. To this position several objections can be urged. In the first place there was never any suit in which the question at issue was, whether this note had been paid. In the second place, neither party to this record was party to any such suit; and in the third place, the Surrogate Court of Queens County never attempted to decide the question at issue.

We do not controvert the position taken by counsel that a final decree of a probate court has the force and effect of a final judgment. But it does not decide questions that are not in issue nor affect the rights of parties not before the court. The only question in a case like the one shown by the record of the Surrogate's court, is the state of the executor's account, for how much he should be charged and with how much he should be credited. The balance found due the estate the executor is ordered to pay over to the heirs or legatees. If the executor prefers to treat

uncollected notes as cash, either for his own convenience, or because he can pay them over to the heirs, as cash, this is a question which concerns him alone, and the decree of the court does not discharge the debtors of the estate from their just debts.

The effect of a final settlement is declared by the laws of New York, as follows: It "shall be deemed conclusive evidence against "all creditors, legatees, next of kin of the deceased, and all "other persons in any way interested in the estate, upon whom "the said citation shall have been served, either personally or "by publication, as herein directed, of the following facts, and of "no others:

"1. That the charges made in such account for moneys paid to "creditors, to legatees, to the next of kin, and necessary ex-"penses, are correct.

"2. That such executor or administrator has been charged "all the interest for moneys received by him, and embraced in "account, for which he is legally accountable.

"3. That the moneys stated in such account as collected, were all that were collectable on the debts stated in such account, "at the time of the settlement thereof.

"4. That the allowances in such account for the increase in "the value of any assets, and the charges therein for the increase "in such value, were correctly made." Revised Statutes of New York, Vol. III, p. 102.

This is the effect of the decree under the laws of New York. Under the constitution and laws of the United States, it has the same force in Kansas. It is unnecessary to argue that this decree can have no greater force in another state than in the state where rendered. The court will observe that there is nothing in the New York statute which makes a final settlement of the Surrogate's court conclusive that the debtors of the estate have paid their debts.

The final decree in the New York court has none of the ele-

ments which can operate as an estoppel in this case. In order to make that defense the appellants should have alleged in their answer if they could have done so truthfully, that there was an action pending in the said court to which the parties to this suit, or their privies, were parties, and that in such action it was a question in issue whether or not the note sued on was paid, and that upon such issue it was decided that said note had been paid. With such allegations and proof to correspond, we should not hesitate to say that we were estopped from insisting that we were not bound by the decree. But in this case none of these elements exists. The court neither had the subject matter of this controversy before it, nor jurisdiction of the parties.

It is also essential to an estoppel that it should be mutual, and that if the judgment of the court had been the other way, the other part would would have been also estopped. In other words, if the account of the executor had shown that this debt had not been paid, the appellants would have been estopped from showing that it had been paid. Of course the absurdity of such a proposition would be apparent to every one, but it is only the converse of the position of the appellants. The appellee is not estopped in this case by any thing that appears in the New York proceedings, for the same reason, that the appellants would not be estopped if the proceedings showed the opposite. The principles of law applicable to this matter are so elementary that it is unnecessary to cite authorities to support them. In the case of Pattison v. Hull, 9 Cowen, 762, a question very similar to the one under discussion was incidentally decided. The decision in the case of Lambeth v. Elder, 44 Miss., 80, is not in conflict with our views in this case. Under the laws of Mississippi, a lien was given on all property sold under a probate decree on credit. The proceedings of the court and the deed were the only notice given of the lien. It became the duty of the purchaser to

examine the probate records and to see if the property had been paid for. There was no way prescribed by law by which notice of the extinguishment of this lien was given. In such a case it was held by the court that where an administrator had charged himself with the purchase money of such sale as paid, and a party had purchased the land in good faith, on the strength of such admission the former was estopped from showing, as a matter of fact, that the land had not been paid for. In this case the only record that gave notice of the lien, also gave notice of its extinguishment. It is the same as if the record of a mortgage also showed its discharge by the proper party, and a party had bought in good faith on the strength of it.

But admitting all that can be claimed for this decision, the appellants have not brought themselves within its terms. They do not tell who they are, nor where nor how they obtained title to the land in dispute. They do not allege or prove that they ever saw the record before this suit was instituted, nor that they bought the land upon the strength of it. If they do not show that they have been injured, by any representation, that the debt in question has been paid, we are not estopped from foreclosing this mortgage.

But the record in question does not show on its face that this note has been paid. It is, at most, a far-fetched inference. There was no decree of the court on the subject.

If it be contended that this is an admission on the part of the executor of the estate that the debt has been paid, the answer to that is that the executor at that time is not the complainant in this case, and that the admissions of one do not bind the other.

Pease v. Phelps, 10 *Conn.*, 62.

The appellants insist that by the rules of equity pleading they have shown that they are the owners in fee simple of the land described in the complainant's bill. If this fact were ad-

mitted it would be immaterial to the decision of this case. They may have been the owners of the property at the time of the filing of this answer, and still we should be entitled to forclose our mortgage. They would be the owners of the fee although their estate were encumbered by our mortgage. But to defeat our claim they must show that Adams had no right to mortgage the property. An answer setting forth that at the time of the execution of the mortgage, they were the owners in fee simple of the premises, would be a complete defense to our bill. An answer setting forth that they were the owners in fee simple, having purchased the premises since the execution of the mortgage, would be no defense. The simple allegation, then, that the appellants are the owners of the land described in the complainant's bill, is no answer to the bill, and it is immaterial whether the same is true or not.

But it is not admitted in the record that the appellants are the owners in fee simple of the mortgaged premises. We do not dispute the rule that an answer, as far as it is responsive to the bill, is evidence for the defendant. But the rule is that when the defendant, in express terms, negatives the allegations of the bill, the answer is evidence for the defendant.

Pember v. Mathers, 1 *Brown, Ch. R.* 52.

This means that the answer is evidence so far as it traverses the allegations that go to make out the complainant's case.

In the case before the court the facts on which the complainant's right to relief depends is the execution of the note and mortgage. To allege that the defendants are the owners in fee simple, denies no allegation in the bill, and the allegation itself might be inserted by the complainant in her bill, and not be fatal to her right to relief. It is perfectly consistent with every allegation of the bill. It makes no issue with the complainant, and, properly speaking, is simply an inducement to other defenses if the same were properly pleaded.

The matters outside the record upon which counsel for appellants dwell, we shall not attempt to answer. The only question raised before the court below, as will be seen by the opinion of the judge, was whether the record of the Surrogate's court proved payment of the debt. The presence of the note and mortgage was not alluded to by either party. As a matter of fact they were on file as evidence, and their possession by the complainant was undisputed. It has only been since the record in this case has been printed, that counsel for the appellee have been aware that they were omitted from the transcript. If that fact is material this court should order the same certified up.

C. M. FOSTER,
G. C. CLEMENS,
Counsel for Appellee.